Tho: Egerton Lyncoln

¶An exposicion of the kinges prerogatiue collected *out of the great abridgement of Iustice*

Fitzherbert and other olde writers of the lawes of Englande by the right worshipfull sir William Staunford Knight, lately one of the Iustices of the Quenes maiesties court of comon pleas:

Wherunto is annexed the Proces to the same Prerogatiue appertaining.

1567.

An exposition of

To the right honorable sir Nicholas Bacon knight, lord keeper of the great seale of Englande: Richard Tottel wisheth health and long lyfe, with encrease of honour.

NOt long sythens, right honorable, and my especiall good Lord, there was deliuered to mee A collection of the kinges prerogatiue, whiche Maister Staunforde had gathered and dedicated vnto your honour: which woorke bycause it is thought well of by the Sages of the lawe, and well worthy to be printed, I am therefore the bolder to put it in print, and publishe the same. And although the saide Maister Staunforde verie shortlye after that hee hadd dedicated the same booke vnto your Lordship, were for his wisedome, grauitie, learning, integritie, & syncere dealinge, aduaunced to be a Iudge in the chiefe Court of this Realme for common plees, and for his good seruice therein was by iust desert made knight, and albeit that your Lordship also sythens that tyme haue achieued the place,

title and degree of high honour by the iudgemẽt & calling of the Queenes moſt excellent maieſty: Yet I haue printed the Epiſtle dedicatorie of the ſaid woork, in the ſame termes that the Authour thereof vſed, and with the ſame ſtile that your honour, and he both then had, when he dedicated the ſaid woorke vnto your Lordſhip, as a Monument and token of the mutuall & long continued amitie betwene you: moſte humbly praieng your Lordſhip to accept in good parte, accordinge to your accuſtomed goodnes, this my boldnes with your honour, and to pardon the ſame.

This 20. day of Nouember.

Your honours moſt bounden
Richard Tottell.

¶Guilielmus Staunfordus Nicholao Bacono Regie Maiestati a Tutelarum procuratione. S. D. P.

(.·.)

QVanquam Anglicanę leges (amice singularis) haud minorem merentur laudem, quá Iudex Fortescueus libro de earum laudibus conscripto, eis tribuere videtur: tamen quoniam earum cognitio tam procul nobis dissita sit, profectio ad eam tam supra modum longa ac operosa, tũ vię et semitę tam asperę, tã salabrosę, tam inamęne sint, vt ad sui aditum paucissimos inuitet, quá plurimos absterreat, vel potius auertat: Optarem in tanta iurisperitorum turba: quam Anglia nunc habet, aliquid excogitari posse, leuandis legum Studiosis, prolongo isto ac molesto itinere. Vt propiore ac commodiore via ducti, valerent et proficiscẽdo & absoluto itinere, alias degustare literas: quibus, non solum legalem scientiam multum illustrarent, sed et munia eis a Regia Maiestate mandata, tum pulchriũs, tum honorificentiús, administrarent. Id quod (meo iudicio) cõmodissimè fieri possit, si tituli, in magna (quá vocant) Fitzherberti Epitome, vel a Iudicibus nostris, vel ab aliis legum peritis, sedulo forent euolũti atq; elaborati, hoc est, omni titulo, in classes ac ordines distributo, singulis eorum actis ac causis, certę legum regulę ac Maximę presiderent. Exempli gratia. In Breuis titulũ cadere possunt hec videlicet, Forma, vitiosa Nomendatura, seu psonę, seu vici, Eadẽ res bis petita, Obitus vel actoris vel rei, Nominis alterutrius partis pẽdente lite mutatio, ceteraq; huiusmodi quę nunc nimis longo titulo sperse tam tumultuarie reperiuntur: vt multo maiorem tum eruditionem, tum sudores, tum vigilias, exigat eorũ distributio, quá rectè distributa

ediscere. Et tamen non possum committere, quin tantę epitomes scriptorem: vel amplissimis laudibus veham, qui sũma sua doctrina, exactissimo iudicio, immensis ac pene dixerim exanclatis laboribus, tam numerosam voluminum multitudinem, quibus vel legendis vix vnius hominis ætas (quantumlibet viuacis) sufficeret: in vnũ dũtaxat volumen atq; adeo epitomen contraxit, vt nunc nostratibus iurisperitis modo volentibus minima opera componere liceat: quippiam, tam facile, tam vtile, tam frugiferũ: vnde studiosi dimidiato tempore quo antehac legibus obdormire sint visi: cum maturiorẽ, tum certiorem noticiam assequerentur, Quo nomine: rei mihi tam vehementer expetitę: typum quendam proposui, ac quasi primas inde lineas duxi, Recipiens ad me, huiusmodi p̃dictorum titulos: qui Regiam prerogatiuam spectant: non quod sum aliqua ex parte dignus, rem tam eximiam, tamque sublimem tractare: nec quod eruditione id prestare valeam: Siquidem de meo, nihilo plus hic est, quá collectio ac dispositio tantum earum rerum, quę eisdem titulis includuntur: Sed magis quod istud meum commentitium, qualecunque sit, tibi semper destinaueram, id quod in nullum alium preter hunc titulum, cõmodè experiri potui, tum quod ad magistratum tuum Regij procuratoris tutelarum, maxime partinere videbatur, tum quod cõpertum habeo, te iurisprudentię incũbentem, hũc quem proposui morem hactenus obtinuisse: quod fecit, vt reliquos tuos contemporaneos eruditione: multis stadijs precurras: tum denique quod tuum iudicium super hisce rebus in quibus assiduè versaris ac exercitaris requiro. Certus me hic rem habere cum homine tam amico, vt si quid lectione dignum inuenerit: id pergratè sit accepturus, sin minus, certè equi boniq; consulturus, reliquum quod habet vitij: emendaturus, aut saltem ad id conniuere velle cõfido. Proinde istud, quicquid est, tibi nuncupo, lege, ac pro tua voluntate fruere.

Vale.

To the right woorshipfull and his *singuler frinde Nicholas Bacon the kinges* Attourney of his court of wardes and Liuerys William Staunford wisheth helth, long lyfe and prosperous successe.

(.·.)

Albeit the lawes of Englande right singuler frinde are worthye no lesse honour, praise and commendacion, then Justice Fortescue in his booke written of the praises thereof dooth attribute and geue vnto them, yet forasmuch as the knowledge of the said lawes is placed so farre of, the iourney thereunto so exceading long and painefull, & the waies and pathes so rugged and vnpleasant: I would wish that amonges such plenty of learned men as be at this day some thing were deuised to help the studets of their lōg iorney that they (being led a more nere & pleasant way) might both as they went and after they came to theire iorneis end gather some other knowledge, not onely therewith to garnish theire owne science, but also the better to serue in such honorable rome as they be called to serue the kinge and souereigne lord in, which thing might well come to passe after my poore mynde, if such titles as be in the great abrigement of Justice Fitzherbert were by the Judges or some other learned men labored & studied, that is to say, euery title by it selfe by speciall diuisions digested, ordered and disposed in suche sort as that all the iudiciall actes and cases in the same might be brought & appere vnder certeine principles, rules and groundes of the saide lawes. As for exaple, vnder the title of Briefe might come these titles, Fourm, Misnaming of the persō, Mysnaming of the town, One thing

twise demaunded, death of the plaintifes syde; death of the defendauntes syde, chaunginge of the name of the pleintife or defendaunt hanginge the sute, with manye suche other lyke which nowe as thinges scatered abroade and out of order lye hidden wythin the saide longe tytle that it requires muche more learninge, paynes and Studye well to order and dispose the matter in the same, then (after order made) to learne and beare it awaye. And yet surelye there cannot bee to muche praise and commendacion geuen vnto that greate learned man the Auctour of the saide great abbridgement, which by his greate learninge, exact iudgement and intollerable paynes, brought suche an infinite nomber of volumes (to the readynge whereof A mans lyfe woulde scant haue sufficed) to a muche more lesse and narower cõpasse, whereupon nowe these learned men wyth lesse paynes might compile the thing that should be so easy so profitable and fruitfull to the studentes thereof, that in halfe those yeares they now lye sleping in, they might come to a ryper and more certeine knowledge and better iudgement: For which cause I haue drawen as it were a patern of the thinge I so muche desire takinge vppon mee such tytles as appertaine vnto the kinges prerogatiue, not as one in anye parte woorthy to treat of a thynge so high & precious as that is or in learnynge sufficient or hable therunto (for of myne owne here is nothinge more then onelye a collection and disposition of that that is alreadye contayned in the saide tytles) but rather beause I haue allwayes meant this my deuyse vnto you, which I coulde not doe or practise so well vppon anye tytle as vppon this that appertayneth vnto your office of Attourneyshippe of the wardes and liueries, partly for that I knowe your selfe to haue obserued the like order in your owne Study, whiche in fewe yeres hath gotten you aboue other the greate learnynge you haue, partlye also for that I couet your Iudgement in

these

these matters wherewith you be daylye in vre and exercised, knowinge that I haue to doe herein with one so muche my frynde that if there be any thinge worthye the readinge he will take it thankfullye, and if not so, well, yet will hee take it in good part, the rest that is amisse he will beare it with me. This therefore what soeuer it bee I dedicate vnto you, read it, peruse it and make of it what you will. Fare you well, from Greis Inne the first of Nouember.

Anno. 1548.

(.:.)

DOminus Rex habebit custodiam omnium terrarum eorum qui de ipso tenent in capite per seruicium militare de quibus ipsi tenentes fuerunt seisiti in dominico suo vt de feodo die quo obierunt de quocunque tenuerint per huiusmodi seruitium dum tamen ipsi tenuerunt de rege aliquod tenementum ab antiquo de corona vsque ad legittimam ætatem heredis: Exceptis feodis Archiepiscopi Cantuariensis, Episcopi dunolm inter Tine et Tese, feodis Com et Baronum de marchia de terris in marchia vbi breuia domini regis non currunt. Et vnde predict' archiepiscopus, epus Com et Baron habeant huiusmodi custodiã licet alibi tenuerunt de Rege.

Prerogatiua is as muche to saye as a priuilege or preeminence that any person hath before another whiche as it is tollerable in some, so it is most to be permitted and allowed in a prince or soueraine gouernor of a realme. For beside that, that he is the most excellentest & worthiest parte or mẽber of the comon body of the welth, so is he also (through his good gouernaunce) the preseruer, nourisher, and defender of all the people bering the rest of the same bodye. And by his great trauailes studie and labours they enioy not onlye their lifes landes and goodes, but all that euer they haue besides in rest peace and quietnes, as Seneca sayethe: Omnium domos illius vigilia defendit, omnium ocium illius labor, omnium delicias illius industria, omnium vacationem illius occupatio. For which cause the lawes do attribute vnto him all honour, dignitie, prerogatiue and preeminence, which prerogatiue doth not onely extend to his owne perso, but

Seneca de consolat' ad Polibium

but also to all other his possessions goods and cattals. As that his person shalbe subiect to no mans suite, his possessions cannot be taken from him by anye violence or wrongfull disseisin, his goods & cattals are vnder no tribute, tolle nor custome, nor otherwise distreinable: with an infinite nomber of prerogatikes more, whiche were to tedious here to recite. Howbeit forsomuch as in euery realme, the kinges prerogatikes are no small parte and portion of the profites and commodities of the Crowne of the same, & namelye within this realme of Englande, it hath bene thought good heretofore to declare and setfurth in writing certeine of the most highest and weightiest matters and articles touching the said prerogatikes. And hereupon was there a declaracion made in writing by auctoritie of parliament holden in the.17. yere of the raigne of kinge Edw. the.2. the beginning wherof is in maner and fourme as is above written: Howbeit this parliament maketh no part of the kinges prerogatike, but long time before it had his being by thorder of the commen law, as plainlye may appeare by them that haue written before the making of the saide statute of prerogatike. For Glanuill, who was chiefe Justice in kynge Henry the.2. daies writing of this matter saith in thys wise.

Glanu. li.7o

Notandum quod si quis in Capite de dño rege tenere debet, tunc eius custodia ad dominum regem plene pertinet, siue alios dños habere debet heres siue non, quia dominus rex nullum habere potest parem, multo minus superiorem.

Also Bracton whiche wrote in the time of the latter raigne of king Henry the.3. saieth.

Bracton. li.1 de custod' et marit' dominorum.

Si aliquis heres terram aliquam tenuerit de domino rege in capite siue alios dominos habuerit siue non, dominus rex aliis prefertur in custodia heredis siue ipse ab aliis prius feoffatus fuerit vel posterius, cum rex parem non habet in regno suo.

Both these writers doe not onelye agree in euery point, but also gene a reason why the kinge shoulde haue the prerogatiue conteined in this firste

chapter

chapter. Also Britton, an other old writer which wrote hys booke in king Edwarde the first name sayeth, des heirs nequedent si ils y eyent ascuns qui aunceſtre moruſt ſeiſie de aſcun terre tenu de nous en chief des aunciens demeanes de noſtre corone volons auer les gardes de touts les terres dõt appent que deiuent deſcend à ceux heirs come lour heritage ouesque touts les blees en teles terres troues mainteſoits de qui fees que les terres ſont. Britton here not only agreeth wt the other, but also geueth the king the corne growing vpon the groundes which the kinges tenant holdeth at the tyme of his death. Also in the great Abridgement of Fitzherbert you shal find in the time of king Henry the thirde written in this manner. Nota quod lex anglię et conſuetudo eiuſdẽ eſt quod a quibuſcunq; aliquis feoffatus fuerit dum tamen a domino Rege aliquo tempore ſcoffatus fuerit per tenementum qd' tenetur per ſeruiẽ militare, quod dñs rex habebit cuſtod' omniũ terrar' et tenemẽtorũ tã de feoffamẽto aliorũ quã de feoffamento proprio. Which text if a man will any thing weigh he may make the kinges prerogatiue more liberall then is made or declared by this ſtatute or any other the writters before remembred, for it extendes to any landes holden of the king by knightes ſeruice whether they be holden of the king in capite or not: but forasmuche as the ſaide other writers haue written ſo plainly in this matter we will ſtand to them and extende the prerogatiue no further, howbeit (as I ſaide) all thoſe writters being ſo longe before the making of this ſtatute doe plainly argue & proue that this ſtatute dothe but confirme and declare that that was the commen law before, vnles we would doubt of the time of the making thereof as Littleton doth in 15. E. 4. but without doubt it was made in king Edward the ſcondes time, and that plainly appeareth by the woordes contayned in the third chapter of this prerogatiue, which be theſe. Et illa voluntas tempore Regis. H. patris Regis E. eſtimari conſueuit &c. Which woordes were not written in kinge Edward the firſt daies, for then the woords had bene patris noſtri,

A. 21. H. 3. in Fitz. ti. Prerogat'. P. 26. & P. 25.

M 15. E 4. 12

noſtri, ſo that (as I thinke) it is not to bee doubted but that it was written in the time aboue limitted and expreſſed. Then go wee to therpoſicion of this firſt chapiter of prerogatiue. The woords be, dominus rex habebit cuſtodiam omnium terrarum eorum qui de ipſo tenent in capite per ſeruicium militare. Theſe woordes go generally to all the kings tenauntes, that is to ſaye, aſwell to his tenantes for terme of lyfe, as to his tenauntes of eſtate of enheritaunce, if it ſo be that he that is in the reuercion haue the ſaide reuercion by diſcent, and be heir vnto the ſaid tenant for terme of life, not forcing whether he haue the reuercion by diſcent from the ſaid tenaunt for terme of life or elſe from any other anceſtour, as take the caſe to be this, a man holdeth no landes of the kinge but onely as tenaunt by the curteſie, and thoſe landes are holden in chiefe by knightes ſeruice & the ſaide tenaunt by the curteſie is ſeaſed in his demeſne as of fee of landes holden of other lordes and dieth, the landes holden of other diſcend vnto him in the reuertion whiche is in dede nerte heire vnto the ſaid tenant by the curteſie, in this caſe the king ſhall not onely haue the wardſhip of ỹ landes that were holden by the curteſie if the ſaide heire be wythin age, but alſo the landes holden of other by vertue of thys prerogatiue. And if the ſaide heire were of full age at the tyme of the deathe of the ſaide tenaunt by the curteſie, the king ſhall haue primer ſeaſon both of the one lande and of the other, as it appeareth in the newe Natura breuiũ. fo. 258. Like lawe is it if a woman be indowed of lands holden in capite and is ſeaſed in fee ſimple of landes holden of other and dieth ſeaſed, and they diſcende vnto the heire whiche is in the reuercion, in this caſe the kinge ſhal haue bothe theſe landes by vertue of this prerogatiue, like as hee ſhall haue in the other caſe before, and that maye you ſee in. 26.li.aſſ. for in bothe theſe caſes they bee the kinges tenauntes, and hold of him by knightes ſeruice in capite, for tenaunt en-

26.li.aſſ.p.57

dower

dower in the kinges cas holdeth not of the heire but onelye of the kinge, as it shal appeare more fully hereafter. But if he in the reuercion bee not heire of the landes holden of other in the cases aboue remẽbred otherwise it is. But what if he in the reuercion haue the same reuercion by purchase and not by discent whether shall the king then haue his prerogatiue or not: and as to that it shoulde seeme by the newe Natura breuium fo. 259 that the kinge shall haue his prerogatiue in that case also, for there the remainder was to the heire and to his wife and to the heires of theire two bodyes lawfully begotten, and the husbande in the remainder dyd sue liuere, howbeit against ỹ law as me semeth, ideo quere. but if the case in the same newe Natura breuium had been, that landes holden by knightes seruice in capite had beene geuen to one for terme of his lyfe the remainder ouer in fee which parson in the remainder hath issue and dyeth and tenaunt for terme of lyfe holdeth landes of other Lordes and dyeth whiche discende to the issue that is in the remainder, there it might be saide that the king shoulde haue prerogatiue in the whole like as he had in the cases before remembred of tenaunt by the curtesie and tenant in dower, for like reason will serue in the one case that serueth in the other.

fitzh. 258. C. ac/ pask. 18 H. 19. c.

The woordes of the Statut be further, de quibus ipsi tenẽtes fuerunt seisiti in dominico suo vt de feodo die quo obierunt de quocunque tenuerint. These woordes rather apperteigne vntoo the landes holden of other then too the Landes holden of the Kinge in Capite, as it shoulde appeare by the cases beefore remembred, and then by these woordes the kinges tenaunt in his life tyme must himselfe bee seased either in possession or reuercion of those landes that hee holdeth of a common person that shall discende vnto his heire, For if hee were neuer seased thereof but they discende vnto his heire from some other auncestor, the king shall not haue his prerogatiue in them as appeareth

vt de feodo.

15.E.4.f.10. reth in 15.E.4. but whether the kinges tenaunt were seased of them in his owne right or in another bodyes right it maketh no difference, as take the case he were seased of them but in right of his wife and hath issue and dyeth, his issue is in the kinges warde for the lande that his father helde in Capite, and afterwarde the wife dyeth the issue bringe still in warde, the Kynge shall haue Prerogatiue in these landes of the wyfe also, because the husband was seased of them in his demeane as of fee the daye of his deathe, and so wythin the compasse of this statute. And this case may you M.13.H.4. 6.1.aB. see in.13.H.4. and note, that notwithstandinge this statute speaketh but of landes, yet seruice are to bee taken by the equitie of the same, as it is plainlye proued by the woordes of Diem clausit extremum, which saieth Quantum terre tenet de nobis aut de aliis tam in dominico quam in seruicio. So that if one holde of the kinges tenaunt by certeine seruices, the King shal haue the seruices in warde, for they be in nature and place of the lande that is holden, and so shall it bee supposed. And therefore when the kinge hath those seruices in warde and the tenaunt that holdeth by those seruices dieth his heire within age, if the saide seruices were knightes seruice the Kinge shall haue warde by reason of wardshippe: But yet by that noe prerogatiue in the other landes of the second warde whiche are holden of the other M.6.R.2. in Fitz.ti.Gard P.105. Lordes, as it may appeare in 6.R.2. For the kinges tenant was neuer seased of those other landes ne yet of the seruice that they were holden by, and so without the compasse of this prerogatiue. Like lawe it is where the Kinge hath the temporaltie of a bishop in his custody duringe the tyme the See is vacant, and one that holdeth of those temporalties by knightes seruice dieth his heir wtin age, ꝑ king shal haue ꝑ wardship of him, & the reason of it is, because ꝑ king hath ꝑ wardship of ꝑ tẽporalties, by reasõ wherof this wardship cometh, whiche temporalties the kinge hath in warde by

the

the order of the comon lawe, in iure coronæ: for they bee barronies, which can be holden of none other then of the kinge in capite, and then by the common lawe, I take it he were no better then a common person: yet his highnes must haue the warde shippe of them that holde of those temporalties by knightes seruice if they falle duringe the time the saied temporalties be in his hands with such landes as they holde of those temporalties but not with such landes as theye holde of other, and than muste the heire thereof when he cõmeth to his ful age sue a liuere as shalmore plainly appeare when we come to the thirde chapiter of this prerogatiue. The woordes of the statute before recited are, in dominico suo: this woorde demeane is not here taken to bee the verie possession or takyng of the profits, for if the kinges tenaũt dye seased but of a reuercion or of a remaynder in landes holden of a common person and duringe the minoritye of his sonne the particuler tenaunte dyethe, the kynge (this notwithstanding) shall haue this lande in warde as he hath the rest as it may appeare. 22.H.6.f.E.4.f.46.E.3. So it is if the kinges tenaunt dye seased of an aduowson appendaunt to landes holden of a common person. The woordes be further, die quo obierunt, and therefore if the kinges tenaunt dye seased, of Landes holden of a commen persone and a straunger abbatethe, yet the heire shalbee in warde, and the kyng maye entre and so is it if the heire recouer by assise of mortdaunceftre as it appeareth in the newe Natura breuium fol. 139. &. T.12.R.2. But take the case to bee that the kinges tenaunte dye not seased but is disseised and dyethe, whether in this case the kynge maye haue prerogatyue or not, and it semethe that hee may, for in all suche cases where the heire hath a right of entre, the kynge may entre in name of the heire and holde it afterwarde in warde: but yf the heire haue but a title of entre or ryghte of action it

M.22.H.6.f. 29.
M.15.E.4.f. 10.
P.46.E.3.f. 10.
Diuers. Droit entre & title entre.

seemethe to be otherwise, holwbeit looke for those matters in the saye bookes of 15. E. 4. f. 12. H. 7. f. 18. Edwardi terstil lib. aff. fo. 18. Where it is abridged that of lawes holden of the kynge in chiefe, the kynge as in ryghte of hys warde myghte seaise by a Scire facias vppon a tytle of entre. And note also that there is somewhat more to bee vnderstanden beare thenne is wrytten or expressed, that is to saye, that the saide Landes muste discende too the kynges warde, for notwythstandynge the kynges tenaunt weare seased in hys demeane as of fee daye of hys deathe in landes holden of a commen persone, yet if the same after hys deathe doe not discende to the kynges warde, but to an other heire, the kynge shall not haue prerogatiue in them as it appearethe in. 12. Ed. 4. The woordes of the statut bee also De quocunque tenuerunt. Put case the kinges tenaunte is seased of certayne thynges whyche neyther are holden of the kynge nor yet of anye other, whether shall the kyng haue them in warde or not, as Market, warren, Vente Secke, or advowisoures grosse: and as it should appeare in. 46. E. 3. f. 21. H. 6. the kynge cannot haue them in warde and yet in 15. Ed. 4. sodne holde oppinion to the contrarye, therefore inquere and learne what the lawe wil in these cases. The woordes of the statute bee, Per huiusmodi seruicium, that is to saye, by lyke seruice. By these woordes the landes that are holden of other muste bee holden also by knyghtes seruice or els the statute extendes not to them, and yet the lawe is taken to the contrarye, for yf the lands holden of other bee holden but in socage or free burgage the kynge shal haue prerogatiue in them as it appearethe in. 24. E. 3. for this statute is but a confirmation of the common lawe, and therefore shallbee taken by equities and namelye when the lawe was so taken in. 9. H. 3 whiche was longe time beefore the makyng of this statut.

T. 12. H. 7. fo 17.

M. 12. E. 4. f. 18. b.

A. 3. H. 7. f. 4 21. H. 6. f. 12. 46. E. 3. f. 16.

M. 25. E. 4. f. 12.

P. 24. E. 3. f. 13.

T. 9. H. 3. ti. Prerogatiue in fits. f. 25.

Holwbe-

Howebeit Bracton and Britton dothe extende this prerogatiue no further then to landes holden of other by knightes seruice, therefore enquire for the cause and reason therof. The woordes bee further, Exceptis feodis archiepi. cantuar' &c. This exception extendes not to the bodie, wherefore the kynge shall holde that in warde against al men, but it extendes to suche landes as are holden of these persones exempted by this statut. But case then that any of these persones pourchace a seignorie since the tyme of the makynge of this statute, shall the kynge haue hys prerogatiue in the landes holden of that seignorie or not? And it is clere he shal notwithstandynge the aforesayde woordes of exception: for theys doe not extende but to suche fees as we are theyrs at the time of the makynge of this statut. Then further, for asmuche as there bee diuers statutes concernynge wardshyppe made aswell beefore as since the time of kynge Edwarde the seconde, let vs see whether this prerogatiue hyld extende to those statutes or not, and it seemethe it dothe, for asmuche as this prerogatiue hathe beene euer from the beginninge as I haue sayde before: And therefore if the kynges tenaunte beeinge seased of landes holden of a common parson makethe a feffement therof by collusion contrarie to the statute of Marlebridge to defraude the lord of the wardshippe and diethe, the king hauing his heire in warde & this matter founde by office shall sease vpon a Scire facias if the collusion be auerrable or vpon a Scire facias, if the collusion be apparaunt & hold the same in warde by force of this prerogatiue, & that appeareth in. 9. H. 4. So likewise wher the statute made in 4. H. 7. prouideth that the heire cestuy que vse shall bee in warde. But case that the kynges tenaunte in capite before the statute in Anno. 27. H. 8. had made a feffement of landes which he holdethe of a common person to the vse of himselfe & his heires and died before that statute,

Bracton li. primo de custod. et releuiis. Britton. f. 78. B.

T. 9. H. 4. 5. Cestuy que.

in this case the kinge shoulde haue hadde his prerogatiue in the Landes so beynge put in feoffament to an vse euen as if his tenaunt had died seased thereof, as it appeareth 12. H. 7. fo 17. Than last of all let vs learne howe the lordes whose fees the kynge hathe in warde by his prerogatiue shal be demeaned and ordered for the rentes to be dewe for their seignories duringe the warodshippe whether they shall leese them as they do the landes. And it appeareth in the booke of assises in 29. E. 3. that they had them by petition at the Kynges handes, & therwith agreeth thoppinion of Hill' in the. 24. yere of kyng E. 3. Learne the reason of these bokes, for it should seme to me the lawe to be otherwise, because that al meane seignories are suspended duringe the time the kyng hathe the tenauntye in warde, if it bee not per case for the surplusage of a rent seruice whiche the meane maye sue for to the kynge by waye of petition: and to saye that the heire shalbe charged at his full age withe the sayde rentes it weare noe reason, for then bothe his lande shoulde bee in warde, and yet he charged to pay rent for the same: wherefore it semeth that these bokes are against the lawe. And with me agreeth Bracton in his first boke in the chapiter de custodia where he sayeth, Et cum tali ratione sint aliorum feoda in manu domini regis pred' ratione alij capitales domini feod' illorum nihil poterint exigere de terris et tenūtis illis nec in seruic' nomine nec in auxiliis ad filiam maritandam vel filium primogenit' militem faciēdū vel in sectis quādiu terre fuerunt in manu domini regis, sed precipiet' vic' qd' hmodi distringere non permittat. Howbeit Bracton in his said booke in the chapter, De reliefs sayeth, that the heire at his full age shall pay his relefe to euery of his lordes notwithstanding he hathe ben in warde, quod nota: for in al other cases he neuer payethe relefe that is to saye where he hathe bene in ward, and hee was he the no other reason for it butte this. s. quod hoc

est

T. 42. H. 7. fo 17.

29. lib. ass, in fits, ti. Petic' p. 5. P. 24. E. 3 f. 4 and the new natura breuium fo. 179.

2588. 8. E. /
1367. 15. b /
3366. 35. B /

est speciale in rege propter suum priuilegium: and so is the booke in the.24. yeare of kynge Edwarde the thyrde and the.39. yeare of the same kynge, howbeit Brittons oppinion is that the heire shall paye noe relefe to the other lordes after hee hathe beene in the kynges warde, and commethe to his full age, and I cannot fynde that the heire in anye suche case shoulde or doothe paye anye relefe to the kynge that is to saye where hee hathe beene in warde: therefore learn what experience teacheth vs in these cases.

26 hy. 8. Bz. and M.39.E.3.in Fits ti. Relief P.3. Britton f. 163.

The seconde chapiter.

ITem Rex habebit maritagium hered' infra etatē & in custodia sua existēn siue terre hered' eorundem sint ab antiquo de corona siue de eschaetis quę sunt in manu domini Regis siue habuerit maritagium ratione custod' terrarum dn̄orum eorundem hered' nullo habito respectu ad prior' feoffamenti licet de alijs tenuerunt.

All that is contayned in this Chapiter was the kynges prerogatiue by the order of the common laive, as it maye appeare in the bokes of Bracton and Britton in the places before noted, and in a boke in the 24. yeare of kyng Edward the thyrde where it is sayde that no lorde can be more auncienter than the kynge, for all was in hym and came from hym at the begynninge. And therefore his highnesse muste haue prerogatiue in the bodye of whosoeuer the infaunte holdeth besides, bee it that the landes are holden of the kynges highnes as of the auncientnes of his Crowne or of hys newe escheates, or come vnto hym as warde by reason of wardshippe, or that his highnesse doe pourchace the seignorie of hym that is lorde by posteriorittie, or pourchaseth a manor holden of one of his honors, whiche are of his newe escheates, of whiche maner thauncester of thinfaunt helde by posteriorittie. In all these cases the kynge shallbee preferred

Bracton li.1. ti.de herede sockman in cuius custodia esse debeat. Britto f. 163 M.24.E.3.f. 24. H.12.H.4.in fits.ti.Gard. P.81.

to the warde shippe of the bodye and mariage beefore anye other lorde of whom the aunceſter alſo helde theire daye of his death by priority of feffement, that is to ſaye, more auncient feoffement: howe be it in theſe caſes hys highneſſe ſhall not haue wardeſhippe in the landes holden of thother lordes, becauſe his tenaunte helde not of hym in cheefe, but onelye ſhall haue preferrement in the bodye and mariage beefore all other. Then ſince the common lawe and ſtatute dothe geue the kinge this prerogatiue, let vs ſee whether his highneſſe maye by grauntinge away his ſeignorie to an other, graunt alſo with the ſame his prerogatiue to the grauntee, that is to ſaye, wheather his grauntee ſhall haue the ſame prerogatiue in the bodye of the chylde as his highnes mighte haue hadde, in caſe the ſeignorie had ſtyll continued in hym. And it appearethe in the. 12. E. 3. fo. 14. H. 4. that if the kynge graunt the ſeignorye to an other in fee ſimple that the grauntee ſhall haue noe prerogatiue, becauſe there remaynethe nothynge in the kynge of that ſeignorie ungraunted. But if the graunt weare made to a common perſone for noe longer tyme then during his lyfe, and the reuerſion ſaued to the kinge, then learn what the lawe will in that caſe, for wee haue in. 5. Edwarde the third that whcare the graunt was made to the Queene for terme of her lyfe the reuerſion in the kinge that her grace hadde prerogatyue euen as the kynge hymſelfe ſhoulde haue hadde, and for none other reaſon there made but onelye becauſe ſhee helde in ryghte of the kynge. But a man may adde further to that reaſon and ſaye that her grace a common perſone bee not lyke, for thoughe ſhee bee a perſone exempte from the kynge and maye ſue and bee ſued in her owne name, yet that that ſher hathe is the kynges, and looke what ſhee loſethe ſo muche departethe from the king, and

M. 12. E. 3. in Fits. ti. Preroga. p. 25. et M, 14. H4 in Fits. ti. Garde p. 86.

fitzh. 142. ffo. 4. H. 5. E. 3. in. Fits, ti. prerogatiue. P. 26.

and therefore all her tenauntes of parcell of her eſtate maye haue ayde unnedpatiye of the kynge without makynge her partye or prayye therunto, and ſo ſhee holdethe merelye in the kynges ryghte: but a common perſone doothe not ſo. For the kynge hathe nothynge too doe wythe the thynge that hee holdethe durynge the lyfe of the leſſee, howebeit yt the graunt bee made to the Queene for terme of her lyfe the remaynder ouer in fee ſymple yt ſeemethe that her grace gettethe no prerogatyue, and ſo yt is ſayde in. 24. Edwarde the thirde. Lyke lawe is it if the kynge graunt an honor to the Lorde prince and hys heires kynges of Englande, it ſeemethe by the better oppinion in 21. Ed. 3. that the Lorde prince ſhall haue there wythe the kynges prerogatiue, becauſe it is not ſeuered from the crowne after the fourme as it is geeuen, for none ſhall bee inherytoure thereof but kynges of this realme. And note well that notwythſtandynge the lawe weare ſo that none in thys caſe but the Queene or prince myghte haue the kinges prerogatiue, yet if the kyng hauinge the ſeignorye in hys handes after that the warde dothe falle, graunt the ſame warde ouer, the grauntee ſhall haue and enioye the preferrement of the maryage agaynſte the other Lordes euen as the kynge ſhoulde hymſelfe, becauſe that notwythſtandynge anye ſuche graunt, yet the kynge is ſayde ſtyll gardeyne and the infaunt dyeth to ſue for hys lyuerye at the kynges handes whenne hee comm̃ethe to hys full age, and not at the handes of the grauntee, whyche in this caſe is but onelye as a commyttee. And ſo is the booke in. 13. H. 4. Lyke lawe is it in the caſe aboue remembred wheare the Queene hathe prerogatiue and the warde fallethe and ſhee grauntethe her wardeſhyppe ouer, her grauntee ſhall haue preferrement in the mariage before all other lords. And ỹ alſo appeareth in the ſayd. 5. E. 3

M. 24. E. 3. f. 34. Garde. 278. 40.

M. 21. E. 3. f. 44.

A. 13. H. 4. in Fits. ti. prerogatiue. P. 24

howebeit that case was enforced by that ỹ the kynge confirmed the state of the graūtee, lyke la we is it ỹ the kyng haue a warde of right of his corone, and graunteth it ouer with special wordes that is to say, ỹ the sayd graūtee shal also haue warde by reason of wardeshippe yf it fall during the mynorite of the firste warde, in this case if there fall a warde whyche holdethe by posteriorite of the heyre that is in warde, yet that notwythstandynge the said graūtee shall haue the preferment in the warde of the body and mariage, eeuen as the kynge hymselfe shoulde haue hadde yf hee had made noe suche graunt, because it is merely in the kynges right whyche remaynethe styll lorde, and the graūtee none other but as it weare hys comyttee: and thys appearethe also in the.12. yeare of kynge Henry the folwerthe.

so. 4. H.5.E.3. in Fits. ti. Prerogā. p.20.

H.12.H.4 in Fits. ti. Gard P.81.

The thyrde chapiter.

ITem Rex habebit seisinam post mortem eorum qui de eo tenent in capite de omnibus terris et tenementis de quibus ipsi fuerunt seisiti in dominico suo vt de feodo cuiuscunque etatis heredes eorum fuerint, capiend' exitus eorundem terrarum & tenementorum donec facta fuerit inquisitio prout moris est, et ceperit homagium huiusmodi hered'.

In the.52. yeare of kynge Henry the thirde longe time beefore the makynge hereof was there an other statute made at Marlebridge concerning this matter: In the.16. chapiter whereof it is thus prouyded. De hereditate autem que de dño rege tenetur in capite sic obseruād' est, vt dominus Rex primam habeat inde seisinam sicut prius inde habere consueuit, nec heres nec alius in hereditatem illam se intrudat, priusquam illam de manibus domini regis recipiet prout huiusmodi hereditas de manibus ipsius et antecessorum suorum

recipi

recipi consueuerit,et hoc intelligatur de terris feodis que ratione seruicij militaris socagij,vel seriantię siue iure patronatus in manibus domini regis esse consueuerunt. Both these statutes declare themselfes to bee of none other force then as a confirmation of that,that was the kynges prerogatiue by the order of the comon lawe,as it may appeare by these wordes,prout moris est,sicut prius habere consueuit, recipi consueuerit,esse consueuerunt. And therewyth agreeth also Britton.fo.167 The woordes of the statute bee,Rex habebit primam seisinam,what prima seisina is,it is declared by the wordes that follow.ꝫ.capiendo omnes exitus &c. by whiche woordes it may appeare ỳ kynge shal not onelye seise,but also receaue the hole profites tyll lyuerye bee sued,which suit moste commonlye hathe bene and is within the yeare and daye nexte after the deathe of his tenaunt,and therefore the kynge vsethe to take no more then the firste fruites, that is to saye one yeares profites if there bee not apparaunt defaultes in the heire that hee will not sue hys lyuerie, in whiche case then the kynges highnesse shallbee aunswered of all the profytes taken tyll lyuerye be sued,or at the least tended and after pursued withe effecte,yea and if it bee a generall lyuerie and not ryghtefullye pursued accordinge to the order of the lawe,the kynge shall reseise and bee aunswered of all the meane profites from tyme of suyng of the sayd lyuerye,for when the lyuerie is missued it is as it had beene neuer sued. Howebeit thys reseisure shall not bee withoute a Scire facias,as I shall thereof speake more at large hereafter. But yf ỳ heyre or he ỳ should sue lyuerie doe make a rightfull suite for the same accordinge to thorder of the lawe,and asmuche as in hym lyethe to do to haue liuerye, howebeeit the kynge will not but willbee aduised ere hee make hym lyuerie and so protracte the time,in this case his highnesse of ryghte maye not haue the profites from the time

Prima seisina quid est.

Les proffetz dm an

Reseisyr pm kynge missue &c.

Lyuerye delayed &c

tyme the partye was thus delayed, but ought to restore the
vnto the partye vppon his lyuerye, as maye appeare in the
H.1.H.7.in Fits. ti. Liuery P.18. firste yeare of Henrye the seuenthe. And thereuppon it is
Liuye duplex. to be noted that there be two kynde of lyueries, the one generall, the other speciall. The generall is the liuerye that this statut speketh of, ỹ especial may be more properly treated of when wee come to the 12. chapiter of this prerogatiue. And this generall lyuerie is sometime made cum exitibus, and sometimes sine exitibus, but for the most parte sine exitibus: for where it is made cum exitibus, from the time of the seisure, there it is properlye noe liuerye, for it appeareth the kynge neuer seised rightfully or by anye title. As for example, if the kynge will seise the lande that is founde in thoffice to be holden of Tharchebyshoppe of Canterburye, or Byshoppe of Durham, or anye suche persones as are exempted in the first chapiter of this prerogatiue, in this case
H.16.E.3.in Fits. ti. Liuere. P.29 they shal haue an Ouster le main vna cum exitibus, as it appearethe in 16. E.3. The same lawe is it yf of landes holden
postea. 56. h in capite there be a lease made for terme of lyfe, the remainder ouer to estraunger, tenaunt for terme of lyfe dyeth, and
14.H.4.f.34 18.E.3.f. 21. this matter founde by office, nowe if the kynge seise, hee in
24.E.3.f.27. the remainder shall haue an Ouster le main vna cum exitibus, as it appearethe in. 14. H.4. 18 E.3. 24. Edwarde the
M.T.E.4. 17. h. thirde. Like lawe it is where. ỹ. hold iointly of the king, & the one dyethe, and this matter founde by office, and yet that notwithstandynge the kynge seises, hee that survives shall
44.li.ass. in Fits. ti. Liuere. P.11. haue an Ouster le mayn vna cum exitibus, as it appearethe in the boke of Assises 44. E.3. and in the newe Natura breuium fo. 256. t. l. 257. For in all these cases where the Ouster
T.45.E.3.f. 18. le maine is vna cum exitibus the king ought not to haue seisesed, and so sayethe Thorp 45. E.3. The wordes of the statute be further, Post mortem eorum qui de eo tenent Upõ this: it is to bee sene at what time after the kynges tenants

death

deathe this lyuerie shallbe sued. If the possession of the free holde immediatlye after the deathe of the kynges tenaunte discende vnto his heire it is to bee sued fourthwithe, and yf but onelye a reuercion discende, then it is not to be sued tyl after the death of the particular tenaunt, as it may appeare in the newe Natura breuium f.291. where the heire sued not lyuerie tyll after the deathe of the tenaunt by the curtesye, tenaunt in dower, and tenaunt for terme of lyfe. But learne what the lawe shoulde haue beene if the kynges tenant hadde dyed seised of a reuersion whereupon rent had beene reserued, hys heire of full age, whether hee should haue thē sued liuerie fourthwith, or els to haue taried tyll the deathe of the particuler tenaunt for in the seuenthe yeare of kyng Henrye the sixte Iune thinks he should tary or els it might followe the kynge should haue double lyuerie that is to say one for the rent an other for the lande, but Paston is in contrarye opinion, and resembles it to a reuersion dependyng vpon an estate tayle with a rent reserued, howbeit at this daye there is election geuen vnto the heire, that is to say eyther to sue his liuerie immediatly after the deathe of his auncestor in the lyfe of these particuler tenaunts, or els to tarye vntill they die, and if he sue his lyuerie in theire lyfe he payethe for primer seisin but the moytie of one yeares profyte, & yf after theire deathe then he payethe the hole yeares profit, howbeit if there be a rent reserued & he pursueth his liuery in the lyfe of the particular tenaunt, it seemes besides ꝑ halfe yeres profit of ꝑ value of the land he shal also paye ꝑ hole yeares profit of the rent reserued, therfore learn what common experience teacheth vs in that case. The woordes of the statut be, Qui de eo tenent in capite. By these woords he must holde of the kinge in chiefe, for yf he holde not of hym in chiefe the kynge can haue noe primer seisin. And yet you shal see in the newe Natura breuium folio.296. that of lands in the citie of Lōdon holden of the kinge in burgage

the

Qt Lyuye serra sue &c.

M.7.H.6.f.3

election donē al heyre.

the king had primer seisin, & the heire thereof sued his liuery but that president semes to bee against the lawe, for Markham saiethe in 7.E.4.ỹ in Neuels case it was founde that ones father died seised of certain lande that hee helde of the kyng in Burgage, and thereupon thercheto' did seise, whiche seiser by thaduise of all the Iustices was discharged by a Supersedeas awarded to thercheto', for the wordes of bothe the forsayde statutes be verye plaine therein, that is to saye that hee must holde of the kynge in capite, but whether he holde of the kyng by knights seruice or by Socage in capite it makethe noe matter so that he holde in capite, for the kinge in bothe cases shall haue primer seisin although not wyth so large a prerogatiue in thone case as in ỹ other. For in the firste case where the tenure is knyghtes seruyce in capite the kynge shall haue the same prerogatiue when the heire is of full age at the deathe of his aūcestor as he should haue hadde yf hee hadde beene wythin age, that is to saye primer seisin aswell in the landes holden of others as of hym selfe, bee it that the landes holden of other bee holden by knyghtes seruice or in Socage. But otherwyse yt ys where the tenure is but a tenure by Socage in capite, for there the kynge shall haue noe primer seisin in landes holden of other, namelye if theye be holden of other by knyghtes seruice, as it appearethe plainlye by the statute of Magna charta capit.27. and in the newe Natura brevium fo.256.C. nor yet anye primer seisin of landes holden of hymselfe in Socage in capite. If the heyre at the deathe of his auncester bee not of the age of.14. yeares, as appearethe, 35.H.6. f.45. Edwarde the third and allso in the newe Natura breuium fol.256. & fol.259. But in euerye of these cases theye to whom the bodye belongeth shall haue an Ouster le main of the landes vna cum exitibus that ys to saye the lordes of whom the land is so holdē by knights seruice in thone case,

T.7.E.4.f.9

Primer seisin sur Socage' tenure en Capite. L.

post.41.C.

T.3333. Stath. Lincyr. si vn tient de Roy en chief en socage & morust et le Roy seisist le heire et ouster le mayn pur ceo seisin le Roy fuit le auantage. Et ritus dest del Statute.

35.H.6.f.47.

T.45.E.3.fo 19.b.

and

and the Prochein amy in the other case. But wher the landes bee holden of the kynge in Socage in capite, & the heire of the age of 14. yeares at the deathe of his aunceſter, there the kyng ſhal haue primier ſeiſin and the heir dryuen to ſue lyuerie, for there is no perſone that can make anye title to the heire or his landes but onelye the kynge, and therefore the king muſt haue his primier ſeiſin, & the heire driuē to ſue his liuerie by expreſſe woords of the foreſaid ſtatut of Marlebridge, & ſo it ſeemeth alſo in that caſe ỳ his highnes ſhall haue primier ſeiſin in landes holden of other, ſo they be holden but in Socage, for the reaſō aboue remembred, Tamen quere. The woordes of the ſtatute bee farther, de omnibus terris et tenementis de quibus ipſi ſeiſiti fuerunt in dominico ſuo vt de feodo. Theſe wordes may bee conferred and coupled with the firſte chapiter of this ſtatute of prerogatiue whiche hath the verye ſelfe ſame woordes. And therefore looke in what caſes noted vppon the firſte chapiter the king hath his prerogatiue by reaſon of wardſhip, In al the ſame caſes ſhall his highnes haue prerogatiue by reaſon of primer ſeiſin if the heire weare of full age at the deathe of his aunceſter. Wherfore to rehearce thē here particularly it were but ſuperfluous, except it bee in the caſe onely of colluſion geuen by the ſtatute of Marlebridge where the heyre is within age, beecauſe it ſpeaketh nothinge of the heire that is of full age. And therefore in that caſe it ſeemes the kyng cannot haue lyke benefyte of primier ſeiſin as hee hathe of wardeſhippe, when the heire is wythein age. Howbeeit there is a booke in that pointe leſte at large whiche is 17. E.3. & 7. E.3. & there the caſe was. The tenaunte enfeffed his ſonne and heire & dyeth before the feffee gaue notice thereof to the lorde. Ideo quere. The woords of the ſtatut be farther, Cuiuſcunque etatis heredes ipſorum fuerint. To theſe woordes alſo ſhall the firſte chapiter of this ſtatute haue

Ca. 6. vide Sta. a° 34 hē. ca. 5.

22 23 Colliuenay. Thorpe le fits est mis de relief en ce cas, & est hors del statute &c.

M. 17. E. 3. f. 63.

M. 7. E. 3. in Fits. ti. Relief. p. 11.

Leheyre en garde, & paye primer seisin amez.

haue relacion, for they plainly declare that if the heire were within age at the deathe of his auncester, the kyng shal haue primer seisin and the heire driuen to sue his liuerie, notwithstandinge also the kynge haue had the wardshippe of hym. For the wordes be generally spoken and maye be extended aswell where hee was within age at the deathe of his auncester, as where hee was of full age. And so hathe it beene euer vsed, sauinge that where hee hath been in ward hee payethe but one halfe yeares profite for primer seisin, and in the other case hee payethe the hole. The woordes of the statute bee farther, capiendo omnes exitus eorundem terrarum & tenementorum, donec facta fuerit inquisitio prout moris est et ceperit homagium hered'. By these woordes it maye appeare that the kynge after the deathe of hys tenaunte and beefore enye office founde, might seise the landes and take the profites, whiche thinge surelye is true, as plainelye is proued by the writte of Diem clausit extremum whiche hath these woords Cepe in manum nostram omnia terras & tenementa &c. donec aliud inde perceperimus & per sacrum proborum hominum diligenter inquiras &c. So the seiser goethe before the inquisition, howbeit sithe the statut made at Lincolne Anno. 29. E. 1 called statutū de Escaetoribus it is not vsed to seise tyll office bee founde, and then the kyng to bee aunswered of all the profites sithe hys tenaunts decease, whiche commethe all to one effecte. And that statute bothe not restrayne the seiser, but that therebe for maye seise at this daye without office. By the aforesaid statute of Marlebridge cap. 16. it is expounded and playnelye set foorthe of what lands and fees the kynge shall haue primer seisin, for these bee the woordes. Et hoc intelligatur de terris & feodis quo ratione seruicij militaris, socagij, vel seriācię sine iure patronatus in manibus domini regis esse cōsueuerunt. By these woordes it maye appeare that he that

Seisir deuant office.

postea. 78. fo

frowyke en son lee temz mr e Chapt. dit q̄ si le dit̄ defte terres p force del bre de Diem clausit extremm̄ &c. sans office, il serra punysh p affyne. Q̄r les paroles del bre en ceo point sont forsk de forme &c.

is warde

is warde beecause of wardeshyppe shall sue liuerye, or where one holdethe of the kynges warde by knyghtes seruice or in Socage and dyethe hys heire of full age, the king shall haue primer seisin of the landes, that are so holden of hys warde, and the sayde seconde heire oxyuen to doe hys homage or fealtye as the case shall require to the kynge, and allso to paye hys reliefe vnto hym and to sue liuerye of the sayde landes as it appearethe bee dyd in the newe Natura breuium fol. 294. f. 295. For it is withein the compas of these woordes, que ratione seruitij militaris. So ys it yf the kynge haue a Bysshoppes temporalties in his hands duryng the time that See is vacant, and one that holdeth of that temporalties by knyghtes seruice or in Socage dyethe hys heire wythein age, in this case, after that the kynge hathe hadde the wardeshippe, the heire at his full age shal paye primer seisin and sue hys liuerye. And so shall he doe yf hee bee of full age at the tyme of the death of hys auncestor, for the woordes of the statute bee, De feodis quę iure patronatus in manibus domini regis esse consueuer', and therwithe agreethe the newe Natura breuium folio. 286. Butte learne yf the kings tenant in chiefe dye, hys heire of fullage and one that holdethe of the heire beefore hee hathe sued his liuerie dyethe, his heire allso beeynge of full age, whether in thys case the kynge shall haue primer seisin of the landes of the seconde heire or noe, as hee shoulde haue hadde yf the heire of his tenaunte hadde beene wythein age, and in the kynges warde at the time when this seconde heire dyd falle, and it seemethe to mee hee shall, for the reason made afore. Thanne laste of all whether this prerogatiue ertende to anye statute made since the tyme of kynge Ed. 2. and it seemes it dothe, and that for the reason noted in ỹ first chapiter, as the setters of Cestuy que vse, before

Le heyre de ceo q̄ ē ward &c. fitzh. 254 a.

Le heyre de ceo q̄ ē ward &c. 20 H8. 2. 8. lest done ward &c. & yelish de le heyre de ceo q̄ ē ward &c. mes trem̄y pur seisin

before the ſtatut made in ỳ.27.yere of kyng H.8. vſed to ſue an Ouſter le mayn ſine exitibus, whiche was in nature of a lyuere for ỳ heire of ceſtuy que vſe which had bene in ward. Item for aſmuche as there be exceptions in the firſte chapiter and none in this, whether theye alſo bee compriſed within this chapiter or not: and me ſeemes theye bee, becauſe theſe.ii.chapiters muſte concurre togerher and agree in euerye thynge. And yf the heire bee within age at the deathe of his auncеſter, the Archebyſhoppe of Caunterburye ſhall haue an Ouſter le mayn vna cum exitibus, ſo that the heyre ſhall not ſue lyuere of that, & then by the ſame reaſon yf hee be of full age at time of the deathe of his auncеſter, for the lyuere in thone caſe and thother is geuen by this chapiter as me ſeme the, Tamen quere.

The fowerth chapiter.

ITem aſſignabit viduis poſt mortem virorum ſuorum qui de eo tenuerint in capite dotem ſuam quę eas contingit &c. licet heredes fuerint plenę etatis ſi viduę ille voluerint, & viduę illę ante aſſignationem dotis ſuę predictę ſiue heredes plenę etatis fuerint ſiue infra etatem iurabunt qd' ſe non maritabunt ſine licencia regis. Et ſi ſe maritauerint ſine licentia regis tunc rex capiet in manum ſuam nomine diſtrictionis omnes terras et tenementa quę de eo tenentur in dotem donec ſatiſfecerint ad voluntatem ſuam ita qd' ipſa mulier nihil capiet de exit' &c. quia per huiuſmodi diſtrictiones huiuſmodi mulieres ſeu viri eorum finem faciant regi ad voluntatem ſuam, et illa voluntas tempore regis H. patris regis E. eſtimari conſuenit ad valenc. predictę dotis per vnum annū ad plus niſi vberiorem gratiam habuerint. Mulieres quę de rege tenent in capite aliquā hereditatē iurabunt ſimiliter cuiuſcunque fuerint etatis quod ſe non maritabunt

ſine

sine licentia regis, et si fecerint terre et tenementa ipsarum eodem modo capiãtur in manũ domini regis quousque satisfecerint ad voluntatem regis.

This statute lykewise doth but confirme the comõ lawe before as it appereth by ꝑ statut of Magna carta ca. 7. which was first made in the tyme of kynge H. the third, which is, qd' nulla vidua distrīgatur ad se maritādũ, ita tamẽ, qd' securitatẽ faciet qd' se nõ maritabit sine assẽsu nostro, si de nobis tenuerint. And also in the 24. yere of the sayd kynge henry ꝑ third, it is sayd, that whẽ the kynges tenãt dieth & his wyfe endowed, shee cannot marie without the kynges licence, & yf shee doe, she & her husband shall make fine. Therpositiõ. It should apere by the wordes ꝑ the wiefes of al them that hold in Capite can not haue dower at ani mans hands but onelie the kinges if his grace will, for in ꝑ his grace hath a prerogatiue aboue al comõ ꝑsõs aswell for ꝑ she shall therebie hold of his highnes in chief as for that she shall not marie wt out license: for so she might be maried vnto the kinges enemie, and there bie ꝑ strẽgth of ꝑ crowne enfebled. Therfore it is prouided that his highnes may assigne the dower whether the heir be of full age or within age, to thentent that she before ꝑ receuing therof shall take a corporall othe not to marie without the kings licẽse. The maner of the assignement whether the heyre be of full age or within age is verie wel sette foorth in the new Natura breuiũ fo. 263. in the writ de dote assignanda. Notwithstanding for ꝑ sõe things are there noted which seme to repunge wt our booke cases, I purpose to confer the one with thother and se how thei can agre. In the said Natura breuiũ it apereth that not withstanding the king had comitted the land ouer to an other, yet the womã sued in the Chãcere to the king for her dower and not to ꝑ cõmittee, & in our bookes you shall se many writs brought against ꝑ comittee, yea & in some of them that she recouered her dower and the king not made partie to the same, as the

ant. 7. a.

fo. 263. b

H.4.h.7.fitz ti.Eyde de Roy.P.33.

boke is in 4. H.7. where the writ of Dower was brought against ỹ kings cõmittee, who pleded in barre without praying in aid of the king, & the barre was found against him, and notwithstanding that it did apere vnto the Justices that the king might be touched therby, yet would they not surcesse but awarded that the demandant should recouer, & toke for their cause the statute of Bigamis the third chapter which saieth in this maner. De dotibus mulierum vbi aliqui custodes hereditatis maritorum suorum custodias habent ex dono vel concessione regis, Siue custodes rem petitam teneant Siue heredes dictorum tenementorũ vocentur ad vvarrantũ si excipiant quod sine rege respondere non possint, nõ ideo Supsedeatur quin in loquela predicta prout iustum fuerit procedatur. This Natura breuium and this boke of. 4. H.7. seme not to agre. For where takes she anie oth wher she recouers by a writ of dower in the comon place: which othe she must nedes haue taken if she had sued in the chauncerie, or howe maie the committee endowe her, when percase he will endowe her of more then she ought to haue or endowe her wher she is not dowable by the law: whervnto one maie answer in this wise, that his wrongful endowment shall not conclude the king, but ỹ his grace maie reformne the thing when he wil, and sins he hath cõmitted all his interest ouer Durante minore etate, his grace maie permitte thendowment made by the committee yf it be rightfullie made to stand: and specialtie because of the statute of Bigamis which alowes it so to be. And notwithstanding she take no othe, yet can she not marie without the kinges license, for this endowmẽt by ỹ comittee is the kings endowment vpon the matter, for ỹ that she holdeth in right of the king which continues still garden notwithstanding any such comissiõ or grãt made of the wardship. Therfore yt shoulde seme ỹ after the ward comitted ouer (as is aforsaid) it is at the electiõ of the woman whether she will sue to the king in the chauncerie or at the comon law against the comittee: But if the king do but comit the ward ouer Durante bene placito

postea. 19. c.

placito otherwise it is, for there she must sue onely to the kinge, as apereth. 8. E. 2. And note well that this statute of Bigamis before recited will also that if the heir of ỳ husband be vouched to warrantie beinge in the custodie of those committees ỳ the Justices shall not surcesse nomore then when the writ of dower is brought against the comittee. Cõtrarie to this braunche of ỳ said statut are there diuers bokes, as 18. E. 3. & 8. E. 3. & 19. E. 3. wher the said comittee came in, the heir being vouched in their ward & showed how they held of the kinges lease & prayd in aid of the king & had it: wherat I do not a litle meruel because of this statute of Bigamis which was neuer spokẽ of ne yet remembred in these bokes, their iudgemẽts as it should seme beinge directlie against this statute. Howbeit ỳ maner of the lease doth not there certenlye apere, ỳ is to sate, whether ỳ wardship were granted Durante bene placito or Durante minore etate, for ỳ would make a differẽce as I haue said before. Also the boke is. 39. E. 3. where in a writ of Dovver brought against ỳ comittee ther was aid grãted of ỳ king, but ỳ semes to be out of ỳ compas of ỳ statute of Bigamis which spekes onelie of thẽ ỳ haue it of ỳ kinges grãt, & so hath not the secõd Comittee, therfore lerne what ỳ law will in these cases. But if ỳ wardship be comitted to ỳ wife wout anie exception or forprise of her dower, she by ỳ is cõcluded to claime ani dower during ỳ said wardship, as it may apere. 9. H. 2. H. 4. in ỳ said new Natura breuium. fo, 204. It is also said ỳ where liuerie is made to ỳ heier before the womã sue for her dower in the chãcerie, & in the said liuerie there is no sauing made for her dower, ỳ thẽ she must pursue her writ of Dovver against the heir: & the reson ỳ there made is, because the king hath made liuerie generally wout ani reseruation of Dower to be assigned by his highnes: whereunto I aunswer, ỳ whẽ liuerie is sued before assignemẽt of dower, there is moche comõlie in ỳ writs of liuerie a sauinge made for her dower if it so be ỳ she were found the kings tenantes wife in thoffice, and she beinge

9. E. 3. 42. B. 18. E. 3. fo. 38. f. H. 8. E. 3. in Fitz ti. Voucher. P. 154. H. 19. E. 3. in Fitz Tit. Aid de Roy. 64. 39. E. 3. fo. 10. 9. E. 3. 42. B. fo. 7. f.

Fitz Tit. Do vver. P 169.

so founde if the heyr sue a general liuerye leuing out these
woꝛdes Salua dote or retenta dote &c. it is a good cause foꝛ
ꝯ kinge to resese the hole, foꝛ ꝯ liuerie is misused in that case,
and that I learned of iustice Spilman which noted it so in. 11.
of H.8. but if she be not found wife in the office, the heire
may sue his liuerie without anie such sauinge: and to saie ꝯ
the kinge by making such a liuerie should waiue the aduan-
tage of his pꝛerogatife in the dower: that semes not to bee
trew vnles the said waiuer were by expꝛes woꝛdes, wher-
foꝛe it semes the heir in that case after liuerie is not bound
to yeld vnto her dower, but her onlie remedie is to sue foꝛ ꝯ
Fortes. 63. f. same to the king, and that must be fyrst vpon an office (as I
think) finding that she was his tenantes wife, Ideo quere,
and learne whether she may haue dower in any case either
in the chancerie oꝛ by writ of Dower at the comen lawe a-
gainst the cõmittee oꝛ the heire, vnles she be found wife first
by office as is afoꝛesaid, except it be in cases where the king
will refuse this pꝛerogatife. And note that like as the kinge
hath a pꝛerogatife by this statute to yeld dower to the wife
of his tenant, so hath his highnes a pꝛerogatife by the comõ
law to withold dower from the wife of his tenant, which
no comon person hath. As put case in a writ of Dower the
heir be vouched in the kinges warde, and the tenãt shows
foꝛ his lien the feffement with warranty of the husbande
which is father to him that is vouched, yet that not withstã
5.23.4. E. 2. acc. ding she shall recouer her dower against the tenant and not
M. 8 E. 2. Rich. 345 against the heir, because ꝯ els the king should lose ꝯ ward
E. 33. accord. ship of the lands wher the womã mate (without her losse) as
40 E. 3. 20 B. acc well recouer her demaund against the tenaunt as she should
against the kinge, and yet if the king were a comon person
26. E. 3. fol. in that case he should lose the wardship of so much as she de-
58. H. 8. E. 3. i maundethe. And this boke is. 26. E. 3. wher it is said that the
Fits ti. Vou- kinges comittee of the wardship shall not haue ꝯ pꝛeroga-
cher P. 154. tife, & therewꝫ agrees. 8. E. 3. And note ꝯ like as ꝯ king hath

pꝛero-

prerogatiue against the wife that bringeth the writ of Dowver, so shall he haue prerogatiue against the tenaunt in the saide writt of Dovver: for notwithstanding that the tenant in ỹ self sãe case haue iudgemẽ, to recouer ouer in value, against the heire which is in the kinges ward, yet he shal haue no execution of that recouerie til the land be sued out of the kinges handes. Howbeit 27. E.3. is contrarie to the said boke of 26. E.3. ideo quere. And learne and enquire whether a womã being thus endowed at the hãds of the feffee of her husband of such lands as he died not seised of and wherof the king at that time can haue no wardship, whether she maye marie or not without the kings licẽse, & it semes she can not for anie wordes comprised within this statute. And it apereth in the boke of Assises. 26. E. 3. that wher a woman was endowed by gardein in chiualrye and afterwards the garden committed treson wherbie the seignorie was forfet to the kinge, that after this forfeiture she should hold of the kinge and not of the heir which was in the reuersion, in which case then she can not mary without licence as me thinketh. Thẽ further, it is to be sene to what lands the statute dothe extend vnto and to what not. It extendes to landes holden in capite wherof any woman claymeth dower, as maie apere by the wordes of the sãe statute and not to anie other lands, for if the king haue in his custodie bysshops temporalties during the tyme the Sea is vacant, and one that holdeth of those temporalties by knightes seruice dieth his heir being within age, whereby the kinge hath the wardship of his heir and ẽdoweth his wife, in this case she shall make no othe but maie marie without licẽse. Like lawe is it wher she is endowed of lands that are holdẽ of him that is the kings highnes ward by reason of a tenure in Capite, for in both these cases the land wherof dower is demaunded are not holdẽ of the kinge in cheefe, and this doth apere in the newe Natura breuium fo. 264. and yet in both those cases she is endowed in the chauncerie, but

sez. 4. c. act. 27. E.3. fo.87 26.li.Ass. P.57

what is that to the purpose? for so shall the heire in those cases sue liuerie of those lands, and yet thei be neuer the more for ỹ holden in chief, but onely vsed for a solempnity becaus thei were in ỹ kings hands once by office, which is matter of record. The wordes of the statute be further. Et si se maritauerint sine licentia regis tunc rex capiet in manū suā nomine districtionis ōnes terras et tenta quę de eo tenēt in dotē &c. These words be knit in a copulatife to ỹ former wordes contained wīn this chapter, that is to saie, wher she hath demāded dower and is sworne not to marie, but yf she will neuer demaūd dower of ỹ lands holden in Capite she may marie wher she will: for the wordes of the statute be quod assignabit viduis dotem, si vidue illi voluerint, & so thinkes Justice Fitzherbert in his Natura breuium fo. 175. How be it by the boke in. 40. libro. All. it apereth that the wife neuer demaunded dower and yet had alowance of it and did marie also wout license and yet pated no fine, & therfore the case was: The kings tenant in taile in chiefe made a feffement by licence and toke estate again to him & to his wife and died, the wife takes an other husband and dies, after whose deth the auncient estate taile being found by office, the license was holden void because the king was disceued therin, and the second baron driuen to answere for ỹ mene profets of ii. partes of ỹ lād but not for ỹ third part, because she was endowable. quod nota. A womā tenant in dower of no mans assignement, & some there thought she should forfet her dower because she was partie to ỹ disceit. How beit this case semeth not to be properlye wīn ỹ cōpas of this statute. Also Fitzherbert in the said Natura breuiū thinketh that wher the king hath vsed to graunt to other ỹ mariage of his widowes that a composicion wīth the grantee made for the same (whether it be made by ỹ wife or the husbād) is as good as if it were made wīth the kinge, yet can not ỹ grātee in such case compell her to marie, for ỹ should be contrarie to ỹ statute of Magna carta cap. 7. which wil ỹ she shal not be constrained to mary by distres, but if she will she maie liue

40. Li. Ass. in Fitz. ti. gard 40. r.

f. 174. & 6

sole

sole. Howbeit at this daye by the statute of 32. H.8. cap. 46. the composition is geuen to the master of ẏ kings wardes & liueries wᵗ iii. of ẏ coũcel of ẏ said court. And likewise authoritie is geuen to thẽ wher ẏ kinges widowes mary thẽ selues wᵗout license to tax a resonable fyne by their discretiõs acoꝛding to ẏ statute of prerog. regis which statute plainlie setteth furth what hath bene vsed to be doon in such cases, ẏ is to saie, the value of her dower by one yere, & therwᵗ agrees the new Natura breuiũ. fo 174. And foꝛ ẏ fine ẏ king shall sease all the lands & tenemẽts so holden in dower as it aperes by ẏ letter of ẏ statute. Howbeit the Regiſter grueth ẏ the king may sese aſwell the land of the husband as of the wife, because ẏ mariage is a wrong doon to the kinge but the statute is cõtrarie to ẏ, & therfoꝛe Fitzherbert in the said Natura breuiũ. fo. 178. thinkes it to be no lawe: Foꝛ as wel might the lands ẏ the woman hath of her inheritãce be thẽ seſed, wherfoꝛe no other land ought to be seſid then ẏ she holdeth in dower, as it aperes in ẏ said Natura breuium. fo. 265. And lerne whether ẏ womã obtaining dower at ẏ hãds of the comittee oꝛ of the heire of lands holden in capite without making any othe may marie oꝛ not without licẽse, & as me semeth she can not, foꝛ as sone as she is ẽdowed of those lãds she is ẏ kings tenant & not tenãt to ẏ heir which is in ẏ reuerciõ: foꝛ if a trespas be done vpõ the land, she shall haue a wꝛit out of the chãcerie ẏ one such hath entred vpon the kinges possessiõ & the auswrie to be made by the king resteth onlie vpõ her, & so is the opiniõ of vvood in. 1. H.7. And yet the reuerciõ is in ẏ heier onlie, foꝛ if she do waſt, ẏ heier shall punish her foꝛ it & not the kinge. Thẽ further, let vs se of what foꝛce this dower is whẽ it is made in the chãcery, & how she shalbe admeſured in ẏ sãe if it be to grete, foꝛ if it be to litle ther is no remedie foꝛ her but to stãd to her owne harmes if she in ẏ chãcerie once did accept it, not foꝛrig whether she were thẽ wĩn age oꝛ of ful age, as it maie apere in. 18 E.3. The dowment in the chauncerie is of this foꝛce, that whether it be by right oꝛ by wꝛong it can not be defeted by waie of plea without a sute made in the chauncerie foꝛ the

Antea. 26. h.

Antea. 7. a.

1. H.7. fol. 3. fitzh. 203. a. 258. c. acc.

18. E.3. 29. B C

deſeting therof, as it apereth in .17.E.3.f.31.E.3. And therfore in a verie ſtrong caſe one doth trauerſe the office which is in the chancerie by reaſon the land is holden of him by knightes ſeruice and not of the king, and hath an ouſter le main vna cũ exitibus: yet if ſhe were endowed before in the chancerie vpõ ỹ office, her dower remayneth vndeſtrd not wſtanding this trauerſe and ouſter le main vntil an other ſute be made in the chauncerie for the deſeting of the ſame. Howbeit in this caſe if the dower be ſo much, the lord that tended the trauers maie haue a writ of admeſurement at the comon lawe and ſo cauſe it to be admeſured wout ſuing to the king for the ſãe. For it is no loſſe to his highnes though ſhe be admeſured, ſeing the land is not holden of of him, as it apereth. 7 R.2. and there it is agreed that the heir ſhall haue a writ of admeſurement of aſſinement of dovver made by his auncеſtor, quere tamen. But the abatour ſhal not haue a writ of admeſurement nor garden en fait of aſſinement made bye garden endroit, nor if the heir were of full age at the deathe of his aunceſtor and died his heir within age, the garden of his heire ſhall not haue a writ of admeſurement. But take the caſe to be that a woman is endowed in the chancerie the reſt of the land there remaininge ſtill in the kinges handes, yf it be ſurmiſed by the heir or any other for the king that ỹ land aſſined to the wife is not extended to the verie value, but that it is more in value then it is extended for, now vpõ this ſurmiſe there ſhalbe a newe extente made, which beinge returned in to the chancery a Scire facias ſhalbe awarded againſt the woman, and if ſhe be warned and come not, or apere and ſaie nothing ſhe ſhalbe newlie endowed, as it is ſaid in Natura breuium fo.263. Then let vs ſee farther at what time the woman may aſke her dower in the chauncerie, and when ſhe is endowed and loſes her dower vpon a recouerie had againſt her by an eigne title how ſhe ſhalbe recompenced. If the husband haue land in diuerſe coun-

ties

17.E.3.f.71. M.31.E.3 in Fitz. ti. Dovver.P.128.

7 R.2. 1 Fitz ti. Admeſur. P.4.

Fitzh. 149. a. a.

ties wherbie after his death there be awarded seuerall writz of Diem clausit extremum in to euerie of those counties she shal not be ẽdowed vntil such tyme as all ẏ said writs be returnd again in to the chancerie, as it maie apere in. 16. E. 3. And note that when she is endowed in the chancerie and afterwardes loses by a recouerie vpon an eigne title, then she hath none other remedie but to cause the recozd of the same recouerie to be remoued in to the chauncerie, and vpõ the first recozd wherby ẏt apered she had dower and this other recozd of ẏ recouerie, she shal haue a Scire facias rectifig both the recozdes against the tenãt of the ii. partes to resese the said ii. partes in to the kinges handes and to be neiwlie endowed of the same, but not to recouer anye damages, not withstanding damages were recouered against her, & this apereth 43. in the boke of assises. Now to the last braunche of this statute, which is, that wemen that hold of the kinge in cheefe any inheritãce of what age so euer thei be shal likewise swere not to marie &c. By the ozder of the comon lawe before the making of this statute all women that were wõ in age & in ward should whẽ they came of ful age be maried by their lozds euerie one of them with their pozcions, and if they were of full age at ẏ deth of their ancestours, yet should they neuertheles be in the lozds keping vntill thei were maried by the aduise & dispositiõ of their lozdes. For as Glãuille in his. 7. boke ẏ he wrote in the time of kinge. Hẏ. 2. sayethe Nulla mulier heres terrę sine dñorum dispositione vel assensu maritare potest de iure vel consuetudine regni, and there fore saieth he ẏt a man haue issue one oz moe doughters which be his heires aparante & marieth ani of them wõut the assent of his lozd, that he therbye forfets his inheritance by the lawe and custome of the relme, so that he shall neuer recouer ẏt again but onlie through his lozdes mercis, and ẏ for this cãuse: For when the husband of such a woman shal do his homage for ẏ tenemẽts so holden by knightes seruice

H. 16. E. 3. in Fitz ti. Liuerc. P. 29

43. lib. ass. in f. 32. Fitz ti. Dowver. P. 79.

Des femes enheritez &c

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it is requisite to haue the lordes will & assēt lest he be compelled to receue homage of his mortall enemie or some other vnable personage, neuertheles yf ỳ tenant sue to his lorde for license to marie his daughter, the lord is bound to conset or els to showe cause whie he should not, and if he will not, the woman may marie wher she listes without his assent. And the said Glanuill further saieth, that Tenant in dower can not in likewise marie without the assent of him that is her warrant, that is to saie the heier: And if she doe she shal lose her dower, and yet there ỳ husbād shal doe no homage, but what then? he shall do fealtie and for that cause also she shal haue license. And further saieth if she holde of diuerse lords it is sufficiēt for her to haue the assēt of ỳ cheefe lorde. Also he saieth that wemen being in ward Si de corporibus suis foris fecerint: which wordes as I vnderstand them bee if thei comit fornicacion and that be proued, then they that offend shalbe disherited, so that her porcion then goes to the other sisters ỳ haue not in the like offended: And if they all offend, then the lord shall haue the inheritance by waye of eschete. Yowbeit saieth he wher they be ons maried by ỳ lordes assent and after berōe widowes thei shalbe no more in ward, but yet if thei marie again they must haue his assēt for ỳ reson before made. But then after thei haue bene once maried, thei shall not forfet their inheritance for their incōtinencie, so that it aperes plainly here by Glanuill that this hole statute of prerog. should be but a confirmacion of the comō law. And that the law was so as Glanuill toke yt, it may partly apere by the said statute of Magna carta cap. 7. For the wordes are not onlie quod vidua securitatem faciet quod se non maritabit sine assensu nostro si de nobis tenuerit, but are also vel sine assensu domini sui si de alio tenuerit And Bracton agrees also with Glanuille. Yowbeit he saieth where

Bracton libro 1, de custodia sockmanorum

where a woman in the life of her auncestors maries with out the assēt of the lord or wher the widow maries without the assēt of her warrant, that the inheritance or the dower shall not now be forfeted, although in olde time yt was. And farther saieth that the heier in socage being a woman shalbe maried by the lord like as she should be if she weare heier of lands holden by knights seruise. And farther saieth that the heier male shalbe maried by the lord more thē once, that is to saie, as oftē as he shall come vnmaried in the time that he is vnder the age of xii. yeres. But now by the statut of w.2.cap.22. the lords are abreged of their power in these mariages of the heires females, for yt thei now be within the age of xiiii. yeres at the death of their auncestor and the lord doth not marie them before thei come to xvi. yeres, then shall thei recouer their heritage without ani thinge geuen either for the ward or for ỳ mariage. And if thei maliciously or thorough euel counsell refuse to marie where their lords doe apoint them without disparagement, then shall their lord hold their land vntill thei come to the age of xii. yeres & longer vntill they haue takē the value of the mariage. Out of this statute (if it be wel cōsidered) a man may gather that the comon laiwe was no lesse then is here recited. And this statute was made about the.3. yere of king. E. the i. a litle before that Britton began to writ his boke: for Britton f.169. saies ỳ the mariages should be offred to the heires females before they accōplishe the age of xiiii. yeares, and yf not the lorde shall lose his right in the saide mariages. I suppose that the printer mistoke the nomber of the yeres and should haue printed sixteene wher it is but forteene, and therfore it is good too see other copies for this matter. And Britton. also sayeth that if he or she haue beene once marryed by the lordes or in the lyefe of theyre father or

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once agreed wᵗ their lord for their mariage, they shall neuer again be maried by him, but maye marie them selues where thei list, so that they hold nothing of the king. And fo. 168. he saieth ꝑ the king shall haue the mariage of all the heires females where thei hold of the king of what age so euer they be as oftē as thei shalbe to marie, so that they can not marrie wout the kinges licence. Thus is the last clause of this chapter exprssely proued by Britton that ꝑ comon law did stil remain as it was for the mariage of the heires females in the kinges case and not altered or abreged by the said estatute of. Iwell: primer, & therfore was ꝑ statut in ꝑ 39. yere of king H. 6. the last chapter made in this wise. Item de auisamēto, assensu et auctho̅itate pred. ordinatū est & stabilitū qd mulieres existentes etatis. 14. annorū tempore mortis anteessorū suorū absque questione seu difficultate habeant liberacionē terrarū et tenᵗorum sūorum sibi descensorum quia sic lex istius terrę vult quod tunc ipsi haberent. How beit this statute prouides not wher thei be within the age of. 14. yeres at the deth of their auncestor, ideo quere. For as our late bokes go sins Brittons time the king hath lost his prerogatife, vpon what occasion I know not, but I would gladlie lerne, for Fortescue saies. 35. H. 6. that when the heir female sues her linerie she takes no oth that she shall not marie as the kinges widow doeth, and therfore saieth he it should seme she should make no fyne yf she marie without licēse. Howbeit Littelton saies that if the heir female be of the age of 15. yeres at ꝑ deth of her ācestor and marie her self without license, that she shall make a fine, for it amoūteth to an alienacio̅. For after issue had the husband is become the kinges tenāt and he solie shall doe homage in his owne name. And yet after wardes in ꝑ 15. yere of E. 4. ꝑ same Littelton saies ꝑ ꝑ latter clause of ꝑ same statute is void, for the

35. H. 6. 46.

doughter which is inward marynge her self to an other wō out licence shal not make a fine to ꝑ king. Thus by the argumēt of the said boke of. 35. H. 6. it aperes that thei take the king to be bound by the said statut of. W. 1. and make him no better then a comon person, wherat I haue no litle meruel sins he is not named in the said statute. For in the said boke it is agreed by ꝑ court that if the king after the age of 14. yeares and before 16. do marie the heir female she shal haue liuerie foorthwith vpō the mariage, although she then bee not of the age of xvi. yeares because that she was of full age before as it is there said, that is to saie, as sone as she was. 14. And ꝑ ii. yeres ouer is but only geuen for the mariage, which when it is once had and the. 14. yeres past the kinge or lord lese theire interest. And so it was granted that if she were maried before the age of. 14. and after her husbād dies before the said age when she comes to the said age of. 14. she shal haue liuery. And there it was also said ꝑ these ii. yeres were geuen to the lord to tender her mariage in, for the tender before was void, because it was wīn ꝑ age of 14. yeres. But note ꝑ if the heire female being vnder the age of 14. yeres falleth in to the kinges handes as ward because of certen lands that her father held of the king in cheefe, & by reson therof the king hath also the lands in ward which are holden of other in socage, in this case when she comes to the age of 14. yeres and is vnmaried she shall not haue liuery of these landes holden in socage, and yet by reson of them the king hath not the mariage of her. But what then? she can not sue her liuerie by parcels, and that is the cause that the hole land shal tary in the kings hands til a hole liuerie mai be sued of them all, and this aperes in the newe Natura breuium fo. 25. And last of all note ꝑt this latter clause extends not to women that clayme by purchase but onlie by discēt. And therfore it aperes. 15. E. 3. that where it was found vpō the Diem clausit ꝑ the wife was iointly infeffed with her husband 31.

H. 35. H. 6. in Fitz ti, Gard. P. 71.

Postea. fo. 4.

15. E. 3. 1 Fitz ti. Liuere. P.

husbād she had an ouster le main without findinge any suer tie of her mariage. And note also that by the comon law yf one will mary the kings niec, that is to sale, his bondwomā wout license he shal pate a fine vnto the king, as aperes in 33. E.3. li. Assisarum.

33.li.ass.in Fitz ti. Trauers.P.36.

The fifth chapiter.

ET si vna hereditas que de Rege tenetur in capite descēdat pluribus participibus tunc omnes illi heredes facient homagium Regi et illa hereditas que de Rege tenetur participabitur inter heredes illos ita quod quil'z eorum extunc partem suam tenebit de Rege.

This statute is somwhat declared by a statute longe time made before, that is to saye in the 14. yere of king H. the.3. called statutum Hibernie de coheredibus which for the better declaracion of this prerogatiue I haue also here noted. Hēricus dei gratia rex Anglie domin' Hibernię et dux Aquitanię et Normannī, comes Andigauie dilecto et fideli suo Gerardo filio Mauriſci Iusticiar' Hibernie salutē. Cum milites de partibus Hibernię nuper ad nos accedentes nobis ostenderunt quod cum hereditas deuoluta sit inter sorores in terra nostra Hibernie Iustic' nostri in eisdem partibus itinerant' incerti sunt, vtrum post natę sorores tenere debeant de primogenita sorore et ei facere homagiū an non. Et quia predicti milites petierūt certiorari qualiter ī regno nostro Anglie ī casu consimili hactenus vsitatum fuit: sic ad instantiam eorundē vobis significamus, quod in regno nostro Anglie talis est lex et consuetudo in hoc casu, quod si quis tenuerit de nobis in capite et habuerit filias heredes ipso patre defuncto ātecessores nostri habuerūt, et nos semper habuimus et cepimus homagium.

magium de omnibus huiuſmodi filiabus, et ſingule earum tenerent de nobis in capite in hoc caſu. Et ſi infra etatem fuerint, nos habebimus cuſtodiam earum et maritagium ſingularum. Si autem de alio domino tenuerint et ipſe ſorores infra etatem fuerint, earum dominus habeat cuſtodiam et maritagium ſingularum, et primogenita tamen faciet homagium domino pro ſe et omnibus ſororibus ſuis, et alie ſorores cum ad etatem peruenerint facient ſeruicia dominis feodi per manus primogenite. Nec poteſt primogenita ea ratione vel occaſione, a poſtnatis ſororibus homagium vel cuſtodiam vel aliquam aliam ſubiectionē exigere, vel habere. Quia cum omnes ſorores ſint quaſi vnus heres de vna hereditate, ſi primo genita poſſet habere homagium aliarum ſororum vel cuſtodiam petere, tunc eſſet illa hereditas diuiſa, ita quod primogenita ſoror eſſet ſimul et ſemel de vna hereditate domina et heres. Heres autē ſue partis, et domina ſororum ſuarum, quod quidem in iſto caſu fieri non poſſit, cum ipſa primogenita nihil poſſet petere plus quam alie ſorores, niſi capitale meſuagium ratione einecie. Preterea ſi primogenita huiuſmodi homagium a poſt natis ſororibus ſuis acciperet, eſſet quaſi domina earum, et habere poſſet cuſtodiam earum et filiorum ſuorum, et hoc eſſet quaſi committere agnū lupo ad deuorandum. Et ideo vobis mandamus quod predictas conſuetudines quas in regno noſtro Anglie habemus in hoc caſu vt predictum eſt, in terra noſtra Hibernie proclamari ac firmiter teneri facias et obſeruari. In cuius rei &c. Teſte me ipſo apud wveſt. ix. die. Februarii. Anno regni noſtri. xiiii.

Before the makinge of this ſtatute called ſtatutum Hibernie it appereth by Glanuill which wrott in ỹ tyme of kinge Henry the ſecond that the huſband of the eldeſt daughter ſhould do homage vnto the Lorde for the hole inheritaunce, and that the other daughters or theyr huſbandes ſhoulde Gláuil li. 7.

husbād she had an ouster le main without findinge any suer tie of her mariage. And note also that by the comon law yf one will mary the kings niek, that is to sale, his bondwomā without license he shal pate a fine vnto the king, as aperes in 33. E.3. li. Assisarum.

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magium de omnibus huiusmodi filiabus, et singule earum tenerent de nobis in capite in hoc casu. Et si infra etatem fuerint, nos habebimus custodiam earum et maritagium singularum. Si autem de alio domino tenuerint et ipse sorores infra etatem fuerint, earum dominus habeat custodiam et maritagium singularum, et primogenita tamen faciet homagium domino pro se et omnibus sororibus suis, et alie sorores cum ad etatem peruenerint facient seruicia dominis feodi per manus primogenite. Nec potest primogenita ea ratione vel occasione, a postnatis sororibus homagium vel custodiam vel aliquam aliam subiectionē exigere, vel habere. Quia cum omnes sorores sint quasi vnus heres de vna hereditate, si primo genita posset habere homagium aliarum sororum vel custodiam petere, tunc esset illa hereditas diuisa, ita quod primogenita soror esset simul et semel de vna hereditate domina et heres. Heres autē sue partis, et domina sororum suarum, quod quidem in isto casu fieri non possit, cum ipsa primogenita nihil posset petere plus quam alie sorores, nisi capitale mesuagium ratione einecie. Preterea si primogenita huiusmodi homagium a post natis sororibus suis acciperet, esset quasi domina earum, et habere posset custodiam earum et filiorum suorum, et hoc esset quasi committere agnū lupo ad deuorandum. Et ideo vobis mandamus quod predictas consuetudines quas in regno nostro Anglie habemus in hoc casu vt predictum est, in terra nostra Hibernie proclamari ac firmiter teneri facias et obseruari. In cuius rei &c. Teste me ipso apud wyest. ix. die. Februarii. Anno regni nostri. xiiii.

Before the makinge of this statute called statutum Hibernie it appereth by Glanuill which wrott in ỳ tyme of kinge Henry the second that the husband of the eldest daughter should do homage vnto the Lorde for the hole inheritaunce, and that the other daughters or theyr husbandes Glāuil li. 7.

shoulde do their seruice for theyr tenemẽts vnto ẏ chiefe lord by ẏ handes of theldest sister or her husband, and yet they for ẏ same should not be bound to do anie homage or fealti to the eldest sister or her husbãd duringe theyr liues, ne yet ẏ heires that come of them in the first degre or secõd degre. But the heires in ẏ third degre by the lawe of the Land were boũd to do homage & to paye relefe for their tenements vnto the heire of the eldest daughter Quod nota. And the reason of it after the minde of Bracton which agreeth with Glanuille is this, that when issue descendeth of them to the 3. or. 4. degre it is not like that issue should faile of their bodies, and then may the heires of theldest daughter take homage verie well, for it is vnlikely that the eldest daughter or her heires shoulde then haue the same by discent, for these be his wordes, Quia cum sint heredes tres de herede in heredẽ extunc vix poterint deficere, et ideo tunc sequitur homagium absquedãpno et periculo donatoris. For if ther were likelyhode of the discent, in this case ẏ takinge of homage should be rather hurtfull then beneficial: For by the anciẽt Lawes if one had infeffed an other to holde of him and had taken his homage, he could neuer be his heire afterwards, but the next vnder ẏ feoffor & his heires of ẏ kinred shoulde rather haue it. As put case before the statute of Quia emptores the eldest sonne had enfeoffed the middelmost to hold of him and had taken his homage, the middlemost dieth without issue, ẏ yongest should haue had the land and not the eldest because of the homage ẏ he toke: howbeit if there were no yonger sonne ne any other heire, then the feoffor might claime the Land againe by eschete and not otherwise: for as longe as there were any, the feoffor or his heires of whome the Lands were so holden might not haue it. And that Bracton sheweth also in his first boke in the title de maritagiis reuersis ad donatorẽ ꝑ defectu heredis. For he hath this text or sainge there, quod homagium expellit dominicum et retinebit

Bract' li. de hom capiẽd.

retinebit seruicium & quod non potest quis esse dominus et heres: so that you may nowe perceiue that this statute of Irelande agreeth with Glanuill, sauing that Glanuill dilateth or declares the common law farther then this statute doth. Also Bracton saith further in his title of Homage that if the eldest daughter in this case will present the tyme and take homage before she needeth, she by that leseth the benefite of the discent, & saieth that the reason why the seruyce ought to be done by the eldest for them all is, because ỹ lord shal not be driuen to take his seruice by parcell mele, & further saith that although the eldest may not haue homage of her sisters forthwith but must tarry a tyme, yet shall they out of hand do fealtie vnto her, & all the other seruices that are to be done, & the eldest shal do them ouer, whiche is contrarie to Glanuill, for he saith the other sisters shall doe neyther homage nor fealtie. Howbeit Britton fol.175. agreeth with Bracton, and there setteth forth the manner of the fealtie by the yonger sisters to be done to the elder, & saith that it is at the election of the lord whether he will take homage & the other seruices by the handes of the eldest onely for thē all, or else of euery sister seuerally for her seruice, for if hee might not so doe, the lord in proces of tyme might happelye lese the wardship of the heires of the other sisters, because of the woordes in the writte of Ward, which are, that the ancestours dyed in his homage, & that would be harde to trye when the homage was euer done vnto him onely by the eldest sister. And Bracton in his said title of Homage sayeth, Cum quelibet soror de facto acapitauerit dño capitali, hoc renocari non poterit a primogeñ vel eius marito, sed semp qd' factum est tenebit, quia capitalis dñs quod ei oblat' est non recusabit, sed siue tenuerint de dño Rege siue de alio cũ homagium factum fuerit siue ante tercium hered' siue post, statim sequentur releuiũ et alia seruiẽ & a little before that sayeth, si plures sorores de dño rege tenuerint in capite tũc primogenit' missa omnes acapitabunt et homagium faciẽt dño

Regi, and therwith agreeth Britton. fo. 171. And yet fo. 198. saieth that theldest only shall do homage vnto the kinge for her selfe & her sisters. Thus haue you now therposition of ỳ said statut of Ireland by the olde writers, by which said statute & the saide writers yt appeareth that this statut of Prerogatiue is but a confirmacion of the common lawe, & doth only set forth & declare what the kings Prerogatiue is whē landes holden in chiefe discend to twoe coparceners. For in this the king hath a Prerogatiue aboue a comon person, aswel for that they shal severallye holde of his highnes, as for that that his highnes shall make the partition, for whether they be of full age at the death of their auncestour or within age, or some of them of ful age & some of them within age, none of them that be of full age shal haue any liverie but wō a partition, & that for the kinges benefite: because that vpō the partition euery one of thē shal haue for his portiō some parte of the landes that are holden of the kinge in Capite. For if some should haue for their porcion onlye the landes holden of other, then the king shoulde lose his prerogatiue in those landes hereafter for euer, because ỳ they that haue them when they shal dye hold nothing of ỳ kinge in capite: and so might the king be deminished of his auncient rights of the Crowne, which were against all naturall equitie. Wherefore the lawe was euer they should all holde of the king. And that appeareth by the writs of Liverie, in which writes there is a prouiso that euery one of them shall haue in her purparte parcell of the landes that are holden of the king in Capite, as you may see in the new Natura brevium fo. 261. And this liverie must be sued with a partition or else it is missued, & it cannot be sued forth vntill such time as all the writes of Diem clausit extremū are come into ỳ Chaūcerie & returned, as appeareth. 16. E. 3. And then if all the coperceners be found of full age, then a writ shall goe out of the Chauncery to the Sherife to extende the landes, & after

H. 16. E. 3. in Fitz. t. Liveri P. 29.

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the extent returned, a writte shal goe to therchetour to make partition and liuerie according to thertent therof made, as appeareth in the newe Natura breuium fo. 261. But if one of the copercencrs be within age and in the kinges warde, then the partition may be made in the Chauncery & then to haue a writte of Liuerie to therchetour of her parte, or else it may be wholly done in the Countrey by therchetour like as they had bene bothe of full age, that is to say, thee of full age being there present in her owne person, and she that is within age onlye by Prochein amye, as it appeareth in the saide newe Natura breuium. fo. 261. Whiche writte shalbee retourned with the partition and afterwardes enrolled in the Chauncerie. And it shoulde seeme that if after the writte of extent retourned she that is of full age do praye a writte of liuerie with a partition, that she shall then neuer after haue a reextent if so be that before it were so highlye extended.

Like lawe is it if the partition be not egal, and she notwithstanding will accept it. But in all those cases she that was within age if she haue to litle for her portion, she may haue a writte of participatione facienda against her other copercener or a Scire facias in the Chauncerie vppon the recorde of Partition that is there, to shew why newe partition or extent shall not be made. By which writte if they bee warned and come not, or come and saye nothing, the land shalbe receiued into the kinges hands, and a newe extent made in the presence of the parties, whiche if it be not extended as it shoulde be, they may pray a reextent before partition made: for after partition the prayer cometh to late. And this may ye see in the newe Natura breuium. fo. 65. and in. 2. E. 3. et. 13 E. 1. but learne whether she may defete the partition by entre wout suyng any such writes or no, because the other are in by matter of record, ỹ is to say, by liuerie, wherunto she is also after a maner party. So is it not like ỹ case of a strãger,

h 223. 20. Extent. 5.

2. E. 3. in Fitz. ti. Liũe P. 8. & 13. E. 1. eodem ti. p. 6.

for a straunger that hath eigne title may enter vppon them after Liuerie notwithstandinge they haue the possession by matter of record. And it is said by Hill.17.E.3.that aduowson assigned in Purpartie may be defeated by puttinge debate vppon the presentment without any other Proces:

a7.E.3.f.36.

And note that sometymes the king is to take a detriment by the liuere with ỹ partition: As take the case to be where some of them be within age and in the kinges warde and some of full age and theyr auncestour dyeth seased not only of Landes holden in chiefe but also of Landes holden of other Lordes, they of full age haue liuerie with a partition, now the kinge leeses the wardwip of as much of the lands that are holden of other as they haue Liuerie of, and yet if no partition had bene made the kinge shoulde haue had the Wardshippe of the whole til the heire had come of full age, as Mombray affirmeth. 21. E.3. And note also that of thinges entier the kinge shall haue by nonage of one of them the whole, and the other that bee of full age gett no parte of it ne yet liuerie therof ne partition: as take the case to be this: A maner holden of the king in chiefe wherunto aduouson is appendaunt discend vnto three coparceners, and one of them is within age and in the Kinges warde, the other two that be of full age maye sue theire liuerie for the lande with a partition, but not for the aduowson: For that shall wholye remaine to the kynge duringe the minoritie of her that is in warde. And this appeareth. 38.H.6.et.21.E.3.

M.21.E.3.32

post.80.c

38.H.6.f.10. & M.21.E.3 fo.34.

And note that if vppon partition made therchetour returneth that some haue theire partes deliuered them and some not, because they sued not to him for it, they that did not sue, maye at all tymes in the Chauncerie sue out a writte vntoo Therchetour to haue the same deliuered vnto them, in whiche write there shalbee enclosed a transcripte of the Partition, as it appeareth in the saide newe Natura breuiū fol.262. and there it appereth also fol.263.that liuerye with a partition

a particion was sued for landes holden in Burgage: but by likelyhode it was no commen burgage: for as it appeareth the heire did his homage for the saide landes. And note also that if the Coparcener of full age take the parte of her sister whiche is in the kinges Warde by lease or graunt of the kinge Durante minore etate, by this she suspendes the particion: For notwithstanding she haue the one moitie deliuered her with the profites of the other moitie, yet when her sister commeth to full age, both they shal sue a newe Iuerie with a particion, as appeareth in the saide newe Natura breuium. fol. 262.

The sixth chapiter.

SI mulier ante mortem anteceſſoris ſui qui de rege tenet in capite ante annos nubiles maritat' fuerit tunc rex habebit cuſtodiam corporis illius mulieris vſque ad etatem quod conſentire poterit. Et tunc elegat ipſa vtrum maluerit habere virum illum cui premaritat' fuerit vel alium quem Rex ei obtulerit, nullus qui de Rege tenet in Capite per ſeruicium militare poteſt alienare maiorem partem terrarum ſuarum ita quod reſiduum non ſufficiat ad faciendū ſeruicium ſuum, ſine licencia Regis, ſed hoc non conſueuit intelligi de membris et particulis earundem terrarum.

This Chapter containeth twoe matters beinge dyuers in nature, and therfore I entend to seuer and deuyde the one from the other, and the Chapter followinge to adioyne to the latter braunche hereof, because they entrete both of one thinge.

The seuenth chapiter.

DE Sericantiis alienatis sine licentia regis consueuit rex arentare huiusmodi Sericantias per rationabilē extentam inde faciendam.

This statute is but a confirmacion of the common law. For it is writen in the.13 yere of king H.3. in this wise. Thomas summonitus est ad respondendum regi quare abduxit Helenam filiam et heredem E. &c. T. dicit quod ipse p assensum E. in vita ipsius E. desponsauit predictam Helenam in facie ecclesie &c. et quia predicta Helena est infra etatem et cū ad etatem peruenerit potest cōsentire matrimonio vel dissentire, ideo remanet predicta Helena in custodia dñi Regis vsq; ad etatem vt consentiat vel dissentiat &c. Here it is not set furth nor expressed what is thage in a woman to cōsent to matrimonie, and that is all that is to be sought vpō this statute: for Bracton in his first booke in the latter ende of a chapter which hath this paragrafe. s. De minoribus qui debent esse sub tutela et Cura dñorum vel parentum saith quod femina septimo anno etatis sue potest consentire matrimonio, et virum sustinere anno duodecimo, for he saieth, quod femina maius est capax doli quā masculus, et quod maturiora sunt vota mulieris quam viri: So that by him it appeareth that a Woman maye consent to matrimonie after she is. vii. yeres of age. And so I iudge the lawe was at that tyme taken. For it appeares in the tyme of kinge E. 1. that a man that helde by knightes seruice maried his heire apparant being vnder age & died, the lorde claimed the wardship of the bodye, & an issue was tended against him, that at the time of the saide mariage the infant was of thage of seauen yeres, and this issue was receiued by the Courte for a good issue to barre the lord of the wardship of the body, qd' nota. Holwbeit it apperes not by the said booke whether the heire were male or female. & Wangford saies An. 35. H. 6. fol. 37.

13. H. 3. in Fitz. ti. Gard p. 147.

13. E. 3. in Fitz. ti. Gard p. 138

that

that when a woman is .vii. yeares of age her auncestour may then gather aid to marie her, which saieng argueth as mee seemeth that shee is then mariageable. And also this seemes to make with Bracton, Howbeit the laive is not so taken in these daies. For she cannot now consent to matrimonie before thage of.12.yeres. This statut spekes onely of the heire female, and yet Cheiny saieth in.7.H.6. that ỳ heir male shalbe taken wim the compas of this statute by an equitie, because the statute is beneficiall: And so it should appere.30.E.1. where the sonne was maried in ỳ life of his ancestour then being no more then of thage of.v. yeres, & whē the childe came to thage of vii. yeares thancestour died & the court adiudged in this case ỳ the lord should haue the wardship of the body, to thentent that if the enfant hereafter ere he passe thage of.14.yeres disagree to the firste mariage, the lord may haue the mariage of him: And so it may appere by this booke that this statut is but a confirmacion of the common law, for euery lorde shal haue like aduauntage in this case as the king shal haue, & therewith agrees Paston.7.H.6. adding farther to this that by the order of the comon law before this statut of Prerogatiue, if ỳ heire would haue stād to ỳ first mariage when he or she came to ỳ yeres of consēt, they should haue paied ỳ double value: & by this statut they pay nothing, & therefore the case was there: The kings tenant in chief hauing a sonne & heir of thage of.14.yeres doth mary hym & dyeth, the king offers the child mariage at the age of.14.yeres, whiche he refuseth, & holdes him selfe to the first mariage, & adiudged ỳ thenfant might so doe & that for the same he should neuer pay the double value ne single of his mariage, & there Babthorp saieth that if ỳ woman had died the heire beinge within the age of consent, the kinge shoulde haue hadde the mariage of the childe, notwithstandinge that hee was once maried in the life of his auncestour, for yt was no mariage, but at pleasure: and therewith agrees Britton fo.169. Yea although the wife had died

M.7.H.6.11

30.E.3. in Fitz.ti.Gard p.156.& 128

M.7.H.6.11

after the yeares of consent and before the childe had come to thage of xii.yeres, quere of this matter for I am enformed that the lawe is not taken at this date as the saide bookes is in.7.H.6.

¶ Now to thother branch of the Statute and the chapter next following the same.

It appeareth by Glanuill in the beginning of his seuenth booke, that euery freeman hauing land whether he had an heire apparant then lyuing or not, or whether the said heire apparant would cõsent to it or not, yet might he geue some reasonable portion of his landes with his daughter or any other woman in mariage, or to any man that had don him seruyce, or in almes to any religious house, or to any other whome he would, so the said gifte were made in his health, for in extremitie of sicknes hee might not bee suffered so to doe, lest it should be thought to be done rather of a rage and furie of the mynde, whiche through sicknes for the moste parte commeth to men, then of any good discretion, and so might he in his gift excede measure. Nolwbeit suche a gyfte in sicknes was euer good with the consent of the heire or with his confirmacion. Againe if he had manye sonnes, he could not without ỳ consent of his heire apparant geue any portion of his enheritance to any of the yonger sonnes, for so might he disherit theldest thorough affectiõ ỳ the fathers lightly beare towardes theire yonger sonne more then towardes thelder. But of his purchased lande he might giue the yonger a portion whether theldest woulde or not. And if he had none issue he might geeue away all his purchased landes. But of the lands of his inheritaunce he might giue away no more but a reasonable portion. And if the landes were departible amongest the heires males, then might the father in his lifetime geeue euerye childe what portion hee woulde, so it exceded not the portion ỳ shoulde descend vnto him. And in that case whether the gifte were of landes purchased

thased or of inheritaunce it made no matter. Howbeit neyther Abbot nor Bishop might i any of these cases gene any porcion of their landes away, without the kinges assent or his confirmacion, because theire baronies bee of the almes of the king or of his progenitours. Hitherto haue ye hearde what Glanuill hath saide. After this was the Statute of Magna carta made, where in the.31.chapter therof it is writen, Nullus liber homo det de cetero ampli⁹ de terra sua vel vendat de cetero, quam vt de residuo terre sue possit sufficienter fieri dño feodi seruiciũ ei debitũ quod pertinet ad feodũ illud. Which statute is but a confirmacion of the comon law, as it doth appere by that that is written in Glanuil. for so one ỳ had helde by knight seruice if he might haue beene suffred to alien ỳ greatest part of his land he would haue alienes the same peraduenture to hold of him but in Socage or by some smal rent, & than hauing so little a liuelyhod left to himselfe, how had he bene then able to haue done the seruice of a knight or a man of warre, or what should his lord haue had in ward to haue founde one to haue done that seruice, surely little or nothing. Wherby the strength of ỳ Realme might haue much decayed: therfore it was a reasonable law to restrain him as me semeth. Howbeit Bracton in his first booke vnder the title, Si ille cui datũ est rem datam vlterius alteri dare possit disputes this matter after a sorte, that is to say, whether ỳ tenant may enfeffe an other agaist the lords will or not, & he there affirmes he may, yea & that to hold of him by what seruice he will, & calleth it Damnũ absque iniuria, seing that though ỳ wardship be not so good after alienacion to the chief lord as it was before, yet the relief is as good in euery point, & then if the lord be serued either of the wardship or relefe, he hath all that knightes seruice requireth. Howbeit saith he when the tenant is so disposed to sell his land, the lorde shalbee preferred to the sale therof before a stranger geuing as muche as an other will. It semeth by Bracton that it was verie doubtfull notwithstanding

standing the statut of Magna carta whither the kings tenãt might alien his whole tenancy or not. And therefore was ỳ statute of Quia emptores terr' made, where it is prouyded that from thenceforth which is in the.18.yere of kinge E.the first after Bractons tyme, it should be lawful for euery free man to sell his landes or tenementes or any parte therof at his pleasure to holde of the chiefe lorde by the same seruice ỳ the feffour helde. Prouided alwates that by anye suche sales there comes no landes to Mortmaine. This statut remedies the mischief that was founde in the wardship, but not the other mischiefe that is to saie touching the defence of the realme. For when one mans lyuinge is so dismembred neuer a one of them is able to doe the seruice of a man for want of lyuelode. Yea and much more vnable since this Statute, then before. For before where he gaue it to hold of himself, he reserued somewhat in place of the lande that went from him, where as now he can reserue nothing of comen right, Notwithstanding ỳ this statute of Quia emptores terrarũ, made it lawfull for all other mens tenauntes, yet was it not lawfull by the said statute for the kings tenants so to doe, that is to saye, neither to alien the whole, nor any parcel therof without the kinges licence. And that appeareth by Bracton fo.88. Which speakes generally ỳ the kings tenantes in chief cannot dismember his fees wout his licence. And because that before the time of king Edw. ỳ firste they might haue alienes without licence to holde of themselfes, as other mens tenauntes might haue done in the like case, & thinking it more lawful for them so to doe after the making of ỳ said statut of Quia emptores thã before, it was thought good to prouide some stay for the same by this statut of Prerogatiue. And yet by ỳ wordes of ỳ other chapter folowing it appereth that the kings tenant by grand seriantie, could neuer haue alienes any lands holden by grand seriantie wout the kings lycẽce. For ỳ was so high a seruice, as Bracton

in

In his firſt booke in the title de magnis ſeriáciis names it Regale ſeruicium, & ſaith it was firſt inuented wᵗin this realme in the time of the Conqueſt, that they coulde not diſmember any parte therof without the kinges lycence. For he ſaith in another place in the ſaid booke amongeſt his writes of partition. Quod ſeriantia diuidi non debet ne cogatur Rex accipere ſeruiciũ ſuũ per particulas. Howbeit ſince the makinge of this ſtatut of Prerogatiue, ſundry opinions haue riſen in theſe matters as may appere by the ſtatut made in the firſte yere of king E.3.ca.12. Which ſaith in this maner. Item pur ceo que pluſours gents du Realme ſoy pleinont deſte greues de ceo que terres et tenemẽts que ſont tenus en chiefe du roy. et aliens ſans ſon conge ount eſte pris auaunt ceux heures en mains le roy et tenus come forfets, le roy, ne les teigne my cõe forfets en tiel caſe, mes voet et graunt que deſormes de tiels terres et tenementes aliens ſoit reaſonable fyne pris en le chãcerie per due proces. So that by this ſtatute it appereth they toke the landes to be forfeted that were holden of the kinge in chiefe and alienes without his licence. And ſo it appereth by a booke in.14.E.3. wher Wilby ſaith that at this day landes holden by graund ſeriantie and alienes without lycence be forfeted. For the ſeruice of one mans body cannot be chãged into another mans body without the kinges aſſent. Alſo in the ſaid firſt yere of king E.3.the.13.chap. It is prouided in this wiſe. Et auxi come pluſors gents du people ſoye pleinont deſte greues per purchaſe de terres et tents que ont eſte tenus des auncestors le roy que ore eſt come des honours, et meſmꝭ tiels tenements ont eſte priſes en le maine le roy, auxi ſi come ils euſſent eſte tenus du roi en chief come de ſa corone, le roy voet que mes ne ſoit home enchelon pur nul tiel purchaſe. By this ſtatut it appereth ỹ if a man hold of ỹ king as of any honor which is come to his highnes by diſcent from any of his auncestours, that by reaſon therof hee ſhoulde not hold in Capite: For that was contrarie to the lawe, as it maye appeare by the woordes of the Statute, whiche ſaithe that the people complayned them ſelues to be greaued hereby, which

T. 9 23. 26. Ch. hezle ỹ auñt ceſt les tnte ne ſuerent forfette mes ſerz priz coe deſtres &c.

14.E.3.in Fitz ti. Quare imp.p.54.

< terres tenus de hommꝭ &c

Whiche is to be vnderstanded vniustlye greeued, for by the
woordes in the first chapter of Prerogatiua Regis it appea-
reth that if it shalbe saide a tenure in Capite, it must bee
holden of ỹ crowne of a long time. s. ab antiquo de Corona
And that is it not when it is but newelye come: and the
statute of Magna Carta. ca. 31. did helpe this matter by ex-
presse woordes, If suche an honour came to the crowne by
waye of eschete, but not if it came by waye of discent or
anye other waye. And that statute doth set forth certeine
honours by name whiche bee not of the auncientnes of the
Crowne, that is to say the honour of Wallingforde, Not-
tingham, Bolingbroke and Lancaster. Therefore he that
holdeth of the king as of these honoures, holdeth not of the
king in chiefe. But other honours there be which of so long
tyme haue beene annexed to the Crowne that to holde of
them is to hold in chiefe, as it appeareth in the new Natu-
ra breuiũ. fo. 2ȝ6. & f. 289. Where one holde of the kinge as
of a certeine honour to yeld a certeine rent to the keepinge
of the castell of Douer, this was there taken to be a tenure
in chiefe. And so it was where one holde of his highnes as
of the honour of ỹ Abbey of Marle. Therefore learne what
honours be of the auncientnes of the Crowne: and what
not. Also there is another Statut made in the. 34. yeare of
the saide kinge the. 15. chapiter. which saieth in this wyse.
Item accorde est et establie que alienacion de les terres & te
nements faits per gents que teignont du roye Henrie besayl
au roy que ore est ou des auters roys deuant luy, a tener de
eux mesmes, que les alienacions estoiẽt en lour force. Saluãt
touts foits a nostre seignour le roy sa prerogatiue de temps
son aiel son piere et son temps demesne. This latter statute
doth argue that the king ought to haue prerogatiue since ỹ
tyme of king Edwarde the. 1. & none before. And surelye so
was the lawe taken, as it appeareth. 20. E. 26. E. 3. & therfore
to chintent the se alienacions made in king H. the. 3. daies &
before

M. 20. E. 3. in Fitz. ti. Ass. P. 122. & P. 124. & 26. li. ass. eodem ti. P. 146.

before should not now be brought in question, this statute was made so that his grace should haue syne for all alyenations without lycence made since kinge Edwarde the firſt tyme, but not for any made before. And this should be the meaning of this statute, which (vnder correction) is mistaken by maister Fitzherbert in his Natura breuium. fo. 226 Howbeit for myne owne opinion I doe not see by al these statutes but that the king hath his Prerogatiue by thorder of the common law, at leſt wise as the comen law hath ben taken since the tyme of king Edwarde the firſte, or else hee could not haue it nowe, for any thinge that I see prouyded for him by these statutes. For this statute of Prerogatiue goeth but to that where his tenaunt in chiefe alieneth the greateſt parte without lycence, Ergo He may alien the leſſer parte without lycence, and so doth the statute expreſſely set it forth, except you will saye there bee twoe licences vnderstanded here, that is to saye a generall lycence by the order of the commen law, and a special licence by this statute, thone to be requisite where any parcell is sold, thother where the more parcel is solde. Therfore enquire and learne what other mens oppinions are vpon this statute. For I fynd no booke to proue it common lawe before Britons tyme, for Glanuill ne Bracton speaketh any thinge of it. And where this statute of Prerogatiue speaketh onely but of knyghtes seruice, the lawe is otherwise taken. For if one do holde of the kinges highnes in Socage in chief he can alien no pece without lycence. Then let vs see what thinges maye bee graunted or done without lycence and at what tyme: And howe the tenaunts that hath lycence shall pursue the same. The Kinges tenaunt that holdeth of hym in chiefe maye graunt a rent charge out of the same without licence as it appeareth. 40. li. ass. et. 7. H. 6. For the kinge by that shall sustaine no detriment. For his highnes nede not to hold it charged except he will. But if one holde an aduouſon of the king,

nota

2.

40. lib. Ass. in p. 5
Fitz. ti. Licence. P. 4.
M. 7. H. 6. fo. a
9 H. 6. 52 b. 11 H. 6. 9. c

king, or a rent, & granteth ouer the same without lycence, the graunter shal paie a fyne. And that appeareth. 21. E. 3. For there the case was that vppon licence with a particō, an aduowson was allotted solye to one of the coparceners & after by composition betwene her & her fellowes she was agreede to leaue thaduouson againe in common amongest them all & to present by tourne, & adiudged that this was an alienacion, for the whiche she must make a fyne: For before she was tenant solye and now shee is become tenaunt iointly againe with her felowes. The like lawe is it if there be lorde mesne and tenaunt, the kinge is the lorde and the mesnaltie is holden of him in chiefe, if the mesne release to the tenaunt without lycence, he shal pay a fine, as it appeareth. 38. li. Ass. and yet the release goeth there by waye of extinguishment, but what then she holdes now by the seruice the mesne did, that is to saie, in chiefe, and so thereby the tenancy is altered. The selfe same lawe is it if twoe iointenauntes be, and thone release to thother wythout lycence, the king shall seise for a fyne, as it appeareth. 40. li. ass. et, 8 H. 4. For the like reason that is made in the case of the coparceners before. But where there is nothinge but a bare right released whiche goeth by waye of Extinguishement otherwise it is. For they of therchecker vppon a fyne sur release onelye ble to make out no proces to aunswer the king of an alienacion. The kinges tenaunt in chiefe may make a lease for terme of yeares without lycence, but not a lease for terme of lyfe, nor no higher interest, as it appeareth. 45. E. 3. and in the new Natura brevium. fo. 198. Then at what tyme or howe he shoulde pursue his lycence: yf the lycence bee graunted by one king he cannot by vertue thereof alien in the tyme of an other kynge as it appeareth 2. E. 3. Lyke lawe yf the landes be in the kinges handes for Primer seisin or alienaciō wout lycēce, at whych time ỳ king doth licence his tenaunt to make a feffement, he cannot make this feffement

21. E 3. 22 Partrom f. 22.

38. lib. Ass. in Fitz. ti. Fines f. 109 fitzh. 226. C.

137 h 8. Bro. alienacons. 21. con.

40. lib. Ass. in Fitz. tit. Licēce. P. 4. et P. 8. H. 4. tit. eodem P. 1.

P. 45. E. 3. f. 6. fitzh. 224 h

P. 2. E. 3. in Fitz. ti. Offiq de court. P. 39.

ment till the landes bee out of the kings handes, as appeareth.21.H.7. Also he that hath lycence may not varie from it in anye point: As if the king lycence the Abbot and Conent to make a feffement, and thabbot sole will make it thys is void, as appeareth.21.H.7. And there Frowike saide that if the kinge licence mee to make a feoffement by deede, I can not make it without deede Nec econtrario. And herewyth agreeth the booke of.3.E.3. Where the lycence was to leuie a fyne of the maner of Dale to fynde twoe chapleynes and he woulde haue leuyed the fyne leauynge out the chapleynes & coulde not be suffred. And.30.E.3. the lycence was to leuye a fyne of the manour of Dale yeldynge a rent, and he woulde haue leuied the fyne of the manour with a Forprise, that is to saye, exceptinge certeine acres parcell of the manour yeldinge the rent, and coulde not bee receiued so to doe, for that should not agree with the licence, which would the whole manour to be charged with the rent. But if there had bene no rent reserued it semes he mought haue alyened any part of the manour by a lycēce of alienacion of ỹ whole manour tamen quere, For it shoulde seeme to be within the woordes of this statute which woulde you shoulde not dysmember the kings fees, and learne if ỹ king licence his tenaunt to make a feffement, whether hee may make it vpon condicion or not, for they vse when a condicionell feffement is to be made to erpresse the condicion within the lycence: & if the condicion be to make an estate againe to the feffour, al this goeth vnder one fyne & in one lycence. And note that if the Iustices before whome the fyne shalbee leuyed be enformed that the landes are holden of the kinge and that so appeare to them by any record, they will not take the fyne tyll they haue seen the licence nor yet engrosse it till they haue receiued a writ out of the Chauncerie called Quod permittat finem illum leuari, by which they may be fullye certified of ỹ kinges pleasure, which writ apereth in ỹ new Na.bre.f.147.C.

H.21.H.7.7

H.21.H.7.8.

H.3.E.3.in Fitz.ti. Fines p.164.

18.E.2. in Fitz.ti. Fines P.124

M.30.E.3.22

m.513.56.B.ar.

And

and that they haue thus vsed it appeareth 4.E.2.f.33.H.6. But they neuer vsed so to doe vpon a recouerie in these commen writs of entre in the post, because ꝯ recouerer in such case should paye no fyne: for it was no alienacion since the recouerer claimed not in by the tenaunt. But nowe by the statute made in the.32.yeare of kinge Henrye the 8.it is ordeined that the recouerer in such case should pay a fyne for alienacion. And note that if an alienacion bee made wythout lycence the pardon is moste commonlye made vnto the Feffee and not to the Feoffour. And so I suppose it ought to be, because the wrong groweth by the entre of the Feffee whiche hath entred the kinges fee wythout hys lycence.

4.E.2.in Fit. ti.Fynes. f. 195.

M.33.H.6.52.

And therefore the case is 14.H.6.that where the kyngs tenaunt alienedwithout lycence, and tooke estate againe to him & to his wyfe in taile, the remainder ouer to his right heires and dyeth without issue, and the kynge pardoneth the wyfe all maner of alienacions, this was thought good to exclude the kyng of his fyne that he shoulde haue hadde for the saide alienacion. And it is further to bee noted that the lycence must bee purchased vppon a true suggestion or else it is voide. For if the kinges tenaunt in taile pretendinge to be tenaunt in fee simple will pourchase lycence to make a Feoffement, this is a voide lycence, as it appeareth 40.li.ass. And in all cases where the kings tenaunt in chief will dismember his tenaunt, that is to saie alien any parcel hereof without lycence, the Kinge may distraine for hys whole rent in the parcell so alienedbut if he haue the kinges lycence to make such alienacion, the alience shall haue a writ in the Chauncerye called de deonerando pro rata porcione, that he shall no further bee charged then after the quantitie of the porcion that he holdeth. This writt you maye see in the new Natura brevium. fo.234.

14.H.6.27

40.lib.Ass.in Fitz.ti.Gard p.1.

The

The eygthe chapiter.

DE eccleſiis vacantibus quarum aduocaciones ſpectãt ad regem & alij preſentauerint ad eaſdem: Ita qd' con tentio inter dominum regem & alios oriatur, ſi Rex per conſideracionem curię preſentationem ſuam recuperauerit licet poſt lapſum ſex menſium a tempore vacationis nullum currit ei tempus, dum tamen rex preſentauerit infra tempus ſex menſium.

Of this chapiter I fynde nothyng neither in Glanuile, Bracton **nor** Britton **ne in anye other olde writter before the makynge hereof, ſauinge that I fynd this terte bothe in** Bracton & Britton .s. quod nullum tempus occurrit regi, **whyche** Bracton **in the beginninge of his firſte boke vnder this tytle** que res dari poſſit **applieth vnto liberties appertayninge vnto the crowne ſaynge in this wiſe,** quod illi qui huiuſmodi libertatem ſibi vendicat doceat huiuſmodi ad ſe pertinere, quia ſi warrantum non habuerit ſpeciale in hac libertate defendere non poterit, quamuis pro ſe pretendit ſeiſinam longi temporis, diuturnitas enim longi temporis in hoc caſu non minuit iniuriam ſed auget, nec in iſto caſu currit tempus contra regem, nec incumbit ei probatio qd' ad ipſum pertinet cum conſtare debeat ſingulis quod huiusmodi de iure gentium pertineant ad coronam. ſed ſunt alie res que pertinent ad coronam que non ſunt ita ſacre quin transferri poſſunt, ſicut ſunt fundi, terre & tenementa & huiuſmodi, per que corona Regis roboratur, et in quibus currit tempus cõtra regem ſicut contra quamlibet priuatam perſonam. **This it appeareth by** Bracton **that this terte bothe not ſerue the kynge in all caſes, for preſcription ſhal holde ſometime againſte the kynge in ſuche thinges as a manne maye preſcribe in, as it is commen in oure bookes that one ſhall preſcribe for wayfe and ſtrayfe and ſuch like againſte the kyng. And alſo it appearethe in the**

poſtea. 42. h

8. H. 5. ti. trauerſe. P. 47.

boke in 8.H.5.that the kyng may forceſſe his time: as wher it is founde that tenant for terme of life hath forfaited hys eſtate to the king, whereby the king ought to ſeaſe, yf hys grace ſeaſe not but tarie till he be dead ſo that hee in the reuercion entreth, he can not then ſeaſe, & ſo it may appere vnto you ỹ though this be an auncien tert. quod nullum tempus occurrit regi, yet in caſes it dothe: & where this terte is onely apointed by this ſtatut to ſerue wher the biſhop taketh the benefice by laps, yet by an equitie it is taken in ſome caſes to extende to a plenartie, that is to ſaye, where a ſtraūger hath preſented & his clerk is in by ſix moneths: As take the caſe to be where the king hath aduowſon in ward & a ſtraunger vſurpes and his clerke is in by ſix monethes before the kyng bringe his Quare impedit, yet ſhall this plenartie bee noe plea againſt his highnes, but that he ſhal recouer: and the reaſon of it is, becauſe els the kynge ſhoulde be withoute remedye. For writ of right he cannot haue hauing but an eſtate in the thinge as gardeyn. Wherefore in thys caſe nullum occurrit ei tempus, for els it ſhould appere that a ſtraunger mighte holde a thinge merelye by wronge againſte him withoute anye good grounde or beeginnynge that can bee intended of it, whiche caſe is agreed. 18.E.3. et 43.E.3-But yet in this caſe the kynge maye not put oute thincumbent whiche is admitted, inſtituted, and inducted in the benefice without ſute, that is to ſaye, Quare impedit, beecauſe it is ſo prouided by the ſtatute of. 25.E, 3. capitule. 3. E.3. R.2. cap 1. Like lawe is it yf the kynges tenaunt be ſeeſed of a manner holden in chiefe to the whiche aduowſon is appendaunt and alienethe the manner wythe the aduowſon wytheout lycence, after the churche becommes voyde and a ſtraunger vſurpes and ſo twentie vſurpations one after an other, and afterward theſe alienations without lycence are founde by office, and the churche becomes voyde.

P.18.E.3.fo. 15.

P43.E.3.fo. 14.

the

the kynge shal presente notwithstanding those vsurpations, and if the churche bee full, hys highnesse maye haue a Quare impedit against thincumbent Causa qua supra. And thys appeares in.4. Edwarde the thirde. But yf the kynge bee seased of an aduowson in his demeane as of fee, it seemes that plenartie shalbee a good plea againste hym, for there his highnesse hathe remedye prouided hym, that is to saye, bye writ of ryghte, and so is thoppinion of Sharde & wylby 18. Edwarde the thirde. Quere, for in the bookes of.43. Edward the thirde, the defendaunt durst not abide by the plea but trauersed the title that was made for the kyng. And learne whether plenartie be a good plea against the quene whiche holde the for terme of lyfe the reuercion to the kyng, for this case is also left at large in.A.18. Edward the thirde. Now to the statut, where the woordes be that no laps shal holde againste the kinge if he present within syr monethes. These woordes yf he present within sir monethes be voide, for thoughe hee presente not, yet title of laps shall not take place agaynste hym by this statute, and therefore the booke is.18. Edwarde the thirde, that where the laps was incurred in the life of the kynges tenaunt and beefore the ordinary presented the tenaunt dyed, and yt was adiudged that the kynge coulde not presente wythein the syr monethes, beecause his tenaunt was then aliue. What say you then to this case, yf the laps dyd incurre after the deathe of the kinges tenaunt and beefore office found, the kynge notwithstandinge shal haue the presentment after office found as it is greed 14. Henrye the seuenthe, and yet ther the king might haue presented after the deathe of hys tenaunt before office founde and did not. And in the saide booke of.14. H.7. it is left for a question, sins the ordynary cā not present by laps against the kinge, howe & in what manner the

H.4.E.3.in fo.2.a. Fits, ti. quare impedit. 33.

18.E.3.f. 15. 43.E.3.14

8 E3. 38. f.

P.18.E.3.f. 18. f. 2. B.

P.18.E.3. 21. A

fitzh. 35. a

& the kynge shoulde psent, & yet

P.14.H 7.22

cure shallbee serued in the meane time that is to saye, betwene the laps and the kinges presentment, somme thinke in that case that the ordinarye shoulde presente one for the meane time whiche shoulde bee remouable alwayes at the kynges pleasure, and some other thinke he shoulde sequester the fruites to fynd ꝑ cure Ideo quere. And Bracton li. 3. in the writte of Darrein presentment saiethe that this title of presentment by laps was geeuen to thordinarie by a constitution made in the councell of Lateranense.

The nynthe chapiter.

REx habebit custodiam terrarum fatuorum naturaliū capiendo exitus eorundem sine vasto & distruccione, & inueniet eis necessaria sua de cuiuscunq; feodo terre ille fuerint, & post mortem eorum reddat eam rectis heredibus, ita quod nullatenus per eosdem fatuos alienētur nec quod eorum heredes exheredentur.

This prerogatiue beganne in the time of kynge E. 1. as yt shoulde seeme to mee, beecause I fynde none that wrote of it before Britton, for Bracton speakes but a lytle of Idcotts in this fifthe boke in the title of exceptions againste the plaintife where he sayethe: it is a good exception to the parsone of hym that complainethe or bringeth anye action to saye hee is a foole naturall, quia tales non multum distāt a brutis qui ratione carent, nec valere debet quod cum talibus agitur, sed tamen discussio huiusmodi exceptionis discrecioni iudicis relinquitur. and sayethe like lawe is it of hym that coulde neuer heere nor speake from the time of his natiuitie, & quod inuenienda sunt eis necessaria quoad vixerint per officium iudicis pro qualitate persone & hereditatis quantitate si he-

res

res esse debeat, & si semel authoritate curatoris adquisierit si fuerit inde eiectus recuperabit per assisam sicut minor. By this it appears that ỹ kyng had no prerogatiue but the iudge. Howbeit Britton.f.167, saiethe that the kinge ought to haue his prerogatiue herein, for these be his woords: Et pur ceo que aseun foites auient que aseun heire est sotte naste, p quoy il nest my able a heritage demaũder et garder, volum⁹ q̄ tiels heires de qui que ils ne vnques teigõnt males & females demurgent en nostre garde oueſq; toutes lour heritages, sauant a chescũ seignour touts auters seruices que a luy appendaunt de terre tenus de luy, & icy remainount en nostre gard tant come ils duront en lour sotie, & ceo ne voilomus nous my de ceux qui deueignount sotes per aseun maladye. fitzh. 233. c

Upon these woords of Britton I note. iij. things, one is ỹ the king shal not haue the custodie during theire lieſes but during theire Idocy, the second notwithstanding the lande is in the kings handes, yet the other lorde shall haue theire seignories, which is by way of petition as I take it: and the thirde is that the other lorde shall not haue the wardshippe of the heire nor of his landes but onely the kynge: whiche thirde thing by this statute of prerogatiue are not so plainelye set fourthe, and also by this statute it appeares that the kynge shall haue the custodye of suche Idcottes durynge theyre lyues, for the woordes bee, Et post mortem eorum reddat eam rectis heredibus and not beefore. The manner howe the kynge shall come to his prerogatiue appeares by a booke case. 16. Edwarde the thyrde, where Sharde sayes that when the kyng is enfourmed that there is suche an Idcotte hys highnes shall sende for hym and cause hym to bee broughte beefore hys chauncellour or some other whom hee shall appoynte, and yf by examination hee bee founde an Idcot, yet his hyghenesse ought not to seaſe his landes vntill suche tyme as hee bee founde an Idcot by office. And in the newe Natura breuium folio. 232. it appea-

mxez. Garde. 5. a

16.E.3. in Fits.ti.Liueryp.30.

res that the kinge appointes all this matter to the Escheatour or Sheriffe bothe to examine and enquire, in whiche sayde Natura breuium folio. 229. it appears that this office when it is founde shall haue relacion a natiuitate to auoide al mean actes donne by the Idiot, that is to saye, his feffements or release: but learne and enquire whether suche feffees shallbee put out by thoffice without anye Scire facias to bee awarded againste them. In 18 E. 32. E. 3. a Scire facias was awarded in that case, and learne allso whether the office shall haue relacion for the profites from the tyme of hys natiuitie or onelye from the findinge of thoffice. Then to the exposicion, the woordes bee, Rex habebit custodiam terrarum fatuorum naturalium. By these woordes it appeethe that he must bee a fole natural, that is to saye, a foole a natiuitate: for yf he were once wyse and became a fole by chāce or misfortun, ỹ king shal not haue the custody of him, and so it is agreed in. 18. E. 3. And allso in the newe Natura breuium. fol. 233. and the manner of the tryall of hym to bee a foole naturall appeares in the sayde Natura breuium folio. 233. that is is to saye, yf hee cannot tell to fiue-tye pence, or tel his age, or who was his father and mother, or such like thinges: whereby yt may appeare hee hathe no kynd of vnderstandinge in that that is eyther for hys profyte or dammage. But if hee bee learned or apte to learne, thenne is hee no Idiot as maister Fitsherbert there thinks, and Grene sayethe in. 31. Edwarde the thirde, That yf hee bee able to begette eyther sonne or doughter he is no foole naturall. The woordes of the statute bee further, Capiendo omnes exitus eorundem sine vasto et destruccione et inueniet eis necessaria sua. By these woordes it appeareth that the kynge maye take the profetes to hys owne vse, fyndynge them theire necessaries. And therefore in the booke beefore of Tricesimo primo of Edwarde the thyrde the kynge dyd lette the lande vnto one of the cosyns

M. 18. E. 3. in Fits. ti. 30. Scire facias. P. 10. et. 106.

M. 18. E. 3. Fits. ti. Scire facias. P. 10.

M. 31. E. 3. ti. sauer de defaulte. P. 37.

of

of the Ideot yeeldynge a rente (butte theſe wooꝛdes, findynge them neceſſaryes) is not onelye mente to the Ideottes themſelues, but alſo to all them that hange vpon them, as theyꝛe wyfe chyldꝛen and familye. And alſo by theſe wooꝛdes ſine vaſto & deſtruccione, it appearethe the kynge is bounde to reparacions of theire landes and tenementes. The wooꝛdes bee alſo, De cuiuſcunque feodo terre ille fuerint By thoſe wooꝛdes it ſhoulde ſeeme the kynge ſhoulde be pꝛeferred in thys tytle of Ideocye, beefoꝛe anye other loꝛde whyche mygbte clayme the Ideot as hys warde, howebeit learne what other menne thynke therein. Et poſt mortem eorum reddat eam rectis heredibus. By theſe wooꝛdes it ſhoulde appeare that the kynge ſhoulde ſaue the cuſtodye durynge the lyfe of the Ideot, and that than an Ouſter le mayne in nature of a lynerye ſhallbee ſuyd of the ſame oute of the kynges handes: butte whether yt ſhallbee made wythe the yſſues and pꝛofyttes from the tyme of the Ideottes deathe, oꝛ onelye butte from ẏ time of the tender of the Ouſtere le mayne learne, butte yf the landes that the kynge hadde ſo in cuſtodye bee holden of hym in capite, thenne notwythſtandyng theſe wooꝛdes of the ſtatute yet the kynge ſhall haue wardeſhyppe, pꝛymer ſeiſin, and all other pꝛerogatiues as yf hys tenaunte in chiefe hadde dyed ſeaſed thereof, beynge noe Ideot, as it maye appeere in the newe Natura breuium. fol. 256. And there it appeares folio. 252. alſo, that allthoughe the Ideot helde noe landes of the kyng, yet a Diem clauſit extremum ſhallbee awarded after hys deathe to enquire what landes hee dyed ſeaſed of, of whom they are holden ꝛc. And it is to be noted ẏ yf one be foũd Ideot by office & beſoꝛe ẏ king ſeaſeth ẏ lands ẏ Ideot dies,

M. 3. E. 2. in Fits. ti. Gard. P. 5.

poſt. 78. b.

yet the kynge shall sease, because of these woordes in the statute, post mortem eorum reddat eam rectis heredibus, whych his grace cannot do but vpon a seisure, and thys appeares 18. Edwarde the thirde. And note allso that if ther descende to an Ideot no possession in landes butte onelye a ryghte, bee it righte of entre or title of entre or ryghte of action, the kynge shall not enter and haue the custodie of the same, as appeares in 1. Henrye the seuenth, and yet if hys tenaunt of landes holden of hym by knyghtes seruice bee disseised and dyethe his heire within age, the kynge shall enter and holde the same in warde: and therfore learn what is the reason that shoulde make a difference in these cases. The woordes be further Ita quod nullatenus per eosdem fatuos alienentur nec quod eorum heredes exheredentur Wye these woordes it appeareth the landes cannot bee alienedby the Ideot nor the heires dischervted, and therefore if the Ideot make a feffement or release of his landes and that founde by office, the kynge shall auoyde it as I haue beefore noted, and so likewyse his heires after his deathe by force of these woordes of the statute. And yet it appeares. 31. E. 3. that a recouerie by default passed against an Ideot, but execucion of the iudgement was stayed because of the kynges possessiō: which proues that notwithstanding the kinge haue the possession durynge the Ideots life, yet his highnes hathe noe freehold therby but onely a bare custody, for the freeholde remaines in the heire. And therewythe agrees. 17 Edwarde the thirde. But what than: this recouerye is not lyke to this alyenation. for by the recouerye the Ideottes heire is not dysherited by thact of his auncestoure yf so bes that the recouerye weare vppon a good title. And it appeares in. 33. Henrye sirte, that an Ideot shall not bee receaued to pleade by garderyne or Procheyne amye, but he hym selfe,

M. 18. E. 3. in Fits. ti. Scire facias. P. 10.

11. H. 7, 15.

Sauer dedefant. f. 37.

H. 17. E. 3. 11 nō.

P. 33. H. 6. f, 18. f. fitzf. 27. g.

selfe shall appeare in proper persone in euerye accyon brought agaynste hym, and whosoeuer wyll pleade besse for hym shallbee admytted: and learne and enquire yf the Ideot bee but tenaunte for terme of lyfe or yeares yf the kynge shall haue hys prerogatiue therein or not, because the Ideot cannot alien that lande to the dischersion of hys heire: and yf hee shall, howe the lessour shall punishe the waste doone in the kynges tyme. And learne allso whether the kynge shall haue the goodes of an Ideot as wel as lande, thenne laste of all yf one bee founde Ideot whiche is none in deede. The manner howe hee shall auoyde this office appeares in the newe Natura breuium folio.233 that is to saye, hee that is falsly founde to bee an Ideot eyther by him selfe or his frinds shall come in to the chaūcerye or beefore the chauncellour of Englande and the kynges counsell and praye to bee exampned of hys ideocye, or hee maye sue a writte out of the chauncerye to hym that hathe the keepynge of hym to bringe hym beefore the kynge and hys counsell to be examined, and if he be found vpon hys examination to be noe Ideot, then by that is thofice and all the reste of the proces auoyded wythoute anye farther trauerse: howebeit where a Scire facias is awarded agaynste the feffee of the Ideot, there the feffee appearing vppon the Scire facias maye trauerse the Ideocye, as it appeares, he dyd in the booke beefore of.18. Edward the third. And note that by a statut made in the.32. of Henry the eight the xlvi. chapiter, Ideottes and theire landes bee in the surueye of the courte of wardes, and the same courte maye let and set theire landes but not to graunt the custody of their bodyes for anye woordes that I can perceaue in the same statute.

The tenthe chapiter.

ITem rex prouidebit quando aliquis qui prius habuerit memoriam & intellectum non fuerit compos mentis sue sicut quidam sunt per lucida interualla quod terre et tenementa eiusdem saluo custodiantur sine vasto & destructione, & qd' ipse & familia sua de exitibus eorundem viuant & sustineantur competenter, & residuum vltra sustentacionem eorundem rationabiliter custodiatur ad opus ipsorum, liberand' eisdem quando memoriam recuperauerint, ita qd' predicta terre et tenementa infra predictum tempus nullatenus alienentur, nec rex aliquid de exitibus percipiat ad opus suum. Et si obierit in tali statu, tunc illud residuum distribuatur pro anima eiusdem per consilium ordinarij.

It appeareth bye Bracton in hys fifthe booke amonge therreptions to the persone of the playnetyfe that it is a good errception to saye that hee that ys demaundaunt or plaintife is of Non sane memorie. For these bee hys wooردes. Competit etiam tenenti exceptio peremptoria ex persona petentis si petens furiosus fuerit, vel non sane mentis quod discere nesciat, vel quod omnino nullam habeant discretionem: tales non multum distant a brutis que ratione carent, nec valet quod cum talibus agitur durante furore. Possunt enim quidam aliquando dilucidis gaudere interuallis, & quidam habent furorem perpetuum:

quod

quod autem actum fuerit cum talibus tempore quo diluci-
dis gaudent interuallis ratum erit, ac si cum alijs agere-
tur siue furorem suū simulauerint siue nō, acquirere qui-
dem non poterunt in ipso furore vel cum non fuerint sa-
ne mentis aliqui qui consentire non possunt nec adqui-
sita alienare vel dare, quia alienacioni non magis consen-
tire possuut quam adquisicioni, sed seisinam retinent quia
animum mutare non possunt quē acquirendo cum esset sane
mentis habuerunt,& furor superueniens nichil adimit non
maius quam morbus incurabilis, sicut lepra: secundum
quod dicitur quod multa impediunt contrahendo que
non dirimunt contractum,& ita sunt multa que impediunt
promotionem, que non deiciunt iam promotum. Et tali-
bus de necessitate dandus est tutor vel curator. So it ap-
pearethe by Bracton that in his tyme yt was thoughte
expediente that folkes that weare destraughte shoulde ha-
ue a tutoure or one that sheulde take the charge of them,
whyche offyce sens is reuolued vnto the kynge and
made parcell of his prerogatiue. For as Fitsherbert in
hys Natura breuium folio.232. berye well sayethe. The
kynge ys the protectoure of all hys subiectes and of all
theire goodes,landes and tenementes, and therefore of
suche as cannot gouerne them selues nor order theire
landes and tenementes hys grace (as a father) muste
take vppon hym to prouyde for them,that theye them sel-
ues and theire thinges maye bee preserued.And beecause
that Lunacye or madnes ys not frome the tyme of ones
byrthe, (as Ideocye is, butte commeth sometymes bys M.3.E.2.in
fytes or courses) hys grace therefore can clayme no cer- Fits.ti.Gard
tayne interesse in the lunatike persone, lyke as hee P.5.
maye doe in the Idiot: and therefore it ys ordeyned that
hys

his booke.f.27.which nowe this statut hath made clere and without question.

The twelfthe chapiter.

ITem habebit escaet' de terris Normanorũ cuiuscũq; feodi fuerint,saluo seruicio quod pertinet ad capitales dominos feodi illius, et hoc similiter intelligendum est, si aliqua hereditas descendat alicui nato in partibus transmarinis, & cuius antecessores fuerunt ad fidem regis Francie de tempore regis Iohannis & non ad fidẽ regis Anglię,sicut contingit de baronia Monumete postmortẽ Iohannis de Monumeta cuius heredes fuerũt de Britañ & alibi de feodis aliorũ recuperauerit Henricus plures escaetas de terris Normánorũ occasione predicta,& eas contulit renẽdas de capitalibus dominis feodi per seruitia inde debita & consueta.

It Appereth by the Cronicles ẏ king Iho̅ was ẏ last duke of Normandie & that in his time Normandy was lost,wherupon king Henry his sonne as it may appeare by the later clause of this chapiter recouered diuers escheates of lande within this realm holden by Normãs, which after they begã to adhere to ẏ Frẽch king ẏ kings enemy & became trayt̃ors vnto his highnes,they forfaited al their lands by order of the cõmõ law to the king of whõsoeuer they were holde. Howbeit in such cases after ẏ forfaiture,if the king had geuẽ these lãds to any other he might not haue geuen them to holde of him selfe,but onelye of them of whom they weare before holden:as this statute plainelye declareth that king Henry the third so did. And like wise in 20.E.46. E.3.it appeareth that if the king do other wise,his patent shallbe repelled and made to holde of the lordes of whom the landes weare holden before the treason,and that by a petition of ryghte to be sued vnto the king for the redresse of the same,

wᵗ Sta. Aᵒ 724. ca. 5.
M.20.E.3.ti. Assi.in Fits. P. 124. et p.46.E.3.ti. Peticion .P. 19.
post. 74 gh/
h.323.10.h.

for

for other remedie haue they none, & distrayne they may not, as appeareth in the newe Natura breuium f.180. And further it should appeare by the sayde boke of.20.E.3. that the king ought not to reteyne such land in his owne handes no while but must dispose thē ouer to holde of them that were lordes thereof at the time of the treason committed. Hereby may you gather that this statute in his first braunch is but a confirmacion of the common law, and that long time before the makinge hereof kinge H.3. had this prerogatiue, as it dothe manifestlye appeare in the later braunche thereof. And also by Bracton in his first boke in the title De custod' & maritagijs dnorum, and like wise in Britton folio.28. The woordes of the statut be further. Hoc similiter intelligendum est si aliqua hereditas discendat alicui nato in partibus transmarinis et cuius antecessores fuerunt ad fid ēregis Francię de tempore regis Iohannis Anglię, sicut de baronia Monumete post mortem Iohannis de Monumeta, cuius heredes fuerunt de Brittannia vel alibi. By this braunch it shoulde appeare that at this time men of Normandy, Gascoign, Guion, Angeo & Brittain, were inheritable win this realm as wel as English men, because that they were sometime subiect vnto the kinge of England and vnder their dominion vntil king Ihons time as is aforesaide, and yet after his time those mē (sauynge suche whose landes weare taken awaye for treason) weare still inheritable within this realme, till the makynge of this statute. And in the time of peace betweene the twooe kinges of Englande and Fraunce theye weare aunswerable within this realme if they had broughte anye action for theire landes and tenementes, as it doth plainly appere by Bracton in his fifth boke in ꝯ title De exceptione quia alienigeñ, for these be his woords. Est autē alia exceptio q̄ competit tenenti ex persona petentis propter defectū nationis q̄ dilatoria est et nō perimit, actionē. Vt si quis alienigena qui fuer' ad fidē regis Frācie & actionē instituit vers⁹ aliquē

aliquē qui fuerit ad fidem regis Anglię, talis nō respondeatur, saltem donec terre sint communes, nec etiam si rex ei cōcesserit specialiter placitare, quia sicut Anglicus non auditur in placitando aliquem de terris & tenementis in Francia, ita non debet alienigena & Francigena qui fuerit ad fidem regis Francię audiri placitando in Anglia. Note here that he sayethe that this exception is but dilatorie and not peremptorie, whiche proueth that hee shall haue his accion at an other time, that is to say, in the time of peace. And also he sayeth after, Donec terre sunt communes, which is as much to say vntill suche time as there is peace betwene Fraunce & Inglande. Also Bracton in his thirde booke vnder the title quod mulier ostendat warrantum per quem petit dotem sayethe si warrantus fuerit ad fidem regis Francię & excipiatur de warranto remanebit dotis exactio in suspenso impetuum vel ad tempus saltem donec terre fuerint comunes. This warrant of dower is the heire of the husbands for by thaūcient law if a woman had brought her writ of dower against any other but the heire, he was not bounde to aunswere her dower vntill such time as she had brought foorth her warraunt that is to say, the heire. In like case after shee is endowed she is not bounde to aunswere to anye other without the heire, and if it might appeare that the heir had no righte in the second part, then shoulde shee be barred of her accion of dower, as it appeareth in the case beefore that hys right is suspended when he is a Frenchmā and the .ij. realmes at warre. Howebeit it appearethe as I haue sayde before that this exception is not peremptorie, but that after the twoe realmes be agayne at peace, she shall haue her dower. The woordes of this braunche be also in the Copulatyue, that is to say, that the aunceſter must be of the allegeaunce of the Frenche king, & that the heire of the sayd aunceſter is born in ỹ part of beyond sea. I put case than that the aunceſtour were of the allegeaunce bothe of thone kynge

and

and the other that is to say the Frenche king and the kyng of Englande whether is this within the compas of this statute? For Bracton in his saide v. book vnder the title De exceptione quia alienigena saith. Quod sũt aliqui qui sunt ad fidem vtriusque sicut fuit W. comes Mareſcallus & manens in Anglia et Michaell de Seins manens in Francia et alii plures, et ita tamen quod si contingat guerra moueri inter Reges remaneat perſonaliter quilibet eorum cum eo cui fecerit ligeantiã. Wherebye it shoulde appeare that of suche as were in allegeaunce to bothe kinges, the kinge shoulde haue no eschetes of their landes. For the woordes of the statute bee not onlye ad fidem regis Francię, but also et non ad fidem regis Ang. ideo quere. And whoe shalbee inheritable at this daie that bee borne in the parties beyonde the sea, and who not. See the statute thereof made in the. 25. yeare of king Edwarde. 3. de natis in partibus tranſmarinis.

The thirtenth chapiter.

QVando aliquis qui de rege tenet in Capite in fata decedat, et heres eius ingrediatur tenẽtum qd̃ anteceſſor ſuus tenuit de rege die quo obiit, antequam fecerit homagium regi et ſeiſinam ſuam ceperit per regem, tunc nullum accreſcit ei liberum tenemẽtum. Et ſi obierit ſeiſitus per idem tempus vxor eius nõ habebit dotem de tenemento illo, ſicut contingit de Matilda filia comitis Hereford vxoris Manuſel mareſcalli, qui poſt mortem wilhelmi Mareſcalli Anglie fratris ſui cepit ſeiſinam caſtri et manerii de Scrogoill, et obiit in eodem caſtro antequã

 intraſſet

intrasset per regem et fecisset ei homagium, et vnde concordatum fuit quod vxor non haberet dotem, eo quôd vir suus non intrauit per Regem immo per intrusionem, sed hoc non intelligatur de Socagio et paruis tenuris.

This Statute is but an affirmacion of the common lawe, as it maye appeare by the case cõprised in the same which was ruled before the makynge of thys statute and iudged accordinge to theffecte hereof. And this statute seemeth too putte a paine vppon the heires that will entrude before they haue sued theire liuere, and taketh awaye from them the free holde that the lawe had elsse vested in them: And yet it is not taken so generallye as the woordes bee, but specially and onelye of intrusions after office founde, and not before: And therefore if the heire enter after the deathe of hys auncestour and before office founde, and the kynge pardoneth him all entries with the profites, this is good and amounteth to a speciall liuere, so that the heir needeth to sue no moe liueries, and yet if thentrusion were after office and then the kinge woulde pardone him it were void, bycause that at the tyme of the pardone he had no freeholde whereuppon the pardon might enure. Like lawe is if the heire before office enter and make a feffement and ỳ kynge pardone the feoffee it is good, and yet suche a feffement after office with a pardone were voide, for the reason I haue made before, Like lawe is if thentrie before office and the pardone after office this is voide, because that by office the kinge taketh the possession from the heire or feffee, and then is there no possession whereuppon the pardon maye enure: And so voide. For the office when it is founde hathe relacion from the death of the kynges tenaunt, if it bee so that the kinge doe not release his right before thoffice founde, and that appeareth. 16. E. 4. where it is also sayde that the pardone must bee as well of the profites as of the entrie,

Nota c'hūsitye. Pardon dentres demnt office & apres office.

A. 3. H. 7. 2.

Nota cest Relacon doffice.

P. 16. E. 4. 1.

entrie, or elles after office founde the kynge shalbe answered of the profites and. 13. Henrye. 4. there is a differences put betweene the pardone that is made to the heyre, and the pardone that is made to the feoffee: For in the case of the feoffee the pardone must bee speciall reherssinge all the matters. Then let vs see further for the endowement, if after the death of the kynges tenaunt the heire dothe not enter but dye before office founde, hys wife shall bee endowed because of a possession in laiwe that was in hym. Like laiwe is it if hee dye after office founde and beefore anye entrie. Like laiwe is it if hee entre before office and dye. But if the kynge bee once seised by office and the heire dye before licence, and the nexte heire will enter beefore a Deuenerstine sued and dyeth, hys wife shall not bee endowed, for in that case it is an intrusion after office. For when the kynge is ones seised by office this seisine remains till liuerie or ouster le maine be sued. And these cases are 1. et. 4. H. 7. The woordes of the Statute bee further sed hoc non intelligatur de Socagio et paruis tenuris. These woordes ake to bee intended of common Socage, for if hee holde of the kynge in Socage in chiefe and wyll intrude after office, nullum accrescit ei liberum tenementum, no more than if the landes were holden by knyghtes seruice in chiefe. And it is a generall grounde that in all cases where hee that sueth hys generall liuerie or ouster le mayne misuseth the same and entreth thereby, thys entrye is an intrusion vppon the kynges possession, and hys wyfe of that possession shall not bee endowed as appearethe. 21. et. 24. Edward. 3.

Diuersitye enter Pardon al heyre & al feffee. ee.

M. 13, H. 4. 3. h.

Liuerye

1. H. 7. 3
4. H. 7. 1. et. 2
M. 38. E. 3. 35.
Antea. 13. gh

24. E. 3. f. 34.
H. 21. E. 3, 28
Postea. 80. f

The fourtenth chapiter.

ITem Rex habebit escaetas de terris libere tenentium Archiepiscoporum et Episcoporum quando ipsi tenentes damnati sunt pro felonia facta tempore vacationis, dum temporalia eorundem fuerunt in manu domini regis, conferend' cui voluerit imperpetuum, saluo seruicio quod ad dictos prelatos inde p ertinet et fieri consueuit.

Of this statute I fynde no booke cale, Howbeit the letter of it is verie plaine and needs no maner of exposicion. For it goeth not to anye other eschetes than suche as growe vpon offences. And if the crime or offence were done whyle the lande was in the kinges handes, notwithstandinge the partie were not attainted thereof vntill suche time as the landes bee out of the kinges handes, yet the king shal haue the eschete by force of this statute. And heare it appeareth howe the kinge shall not hold the landes forfaited still in his handes but must geue them ouer to hold of them that they were holden of before.

The fiftenthe chapiter.

QVando dominus Rex dat vel concedit alicui manerium vel terram cum pertiñ, nisi faciat in charta sua vel scripto expressam mentionem de feodis mill' aduocationibus ecclesiarum, et dotibus cũ accidunt ad predictum manerium vel terram pertineñ tunc his diebus rex reseruat sibi eadem feoda, aduocationes cum dotibus licet inter alias personas non fuerint obseruata.

It

It is agreed in. 42. E. 3. that by the order of the comon laive before this statut, if ỹ king had ben seised of a maner to the which aduouſõ had bene appẽdãt, & had geuen it to me, notwithstanding that in the kinges grant there hadde bene no mencion made of the auowson nor of these woordes cũ ptiñ, yet thauouson hadde passed from his highnes by the sayde grant: for in those dates ỹ king was but a comon parson, & a writte of Enter sur disseisin, & all other accions did lye against him as against any other comon pson. And therefore in 20. H. 3. A writte of entrie was brought againste one supposing ỹ he had no entrie but by disseisin, which ỹ king did to the demaundant when he was wỹn age, & also Wilby. 24. E. 3. reporteth ỹ he hath sene a writte which was Precipe H. regi Anglię, in place wherof is now geuen Petition by hys Prerogatiue. And so it is said. 22. E. 3. ỹ in tyme of king H. 3. and before the king should be empleded as any other comẽ pson. But king E. his sonne ordeined that none should sue him but be driuen to their petition. Howbeit (sauing reformacion of these bookes) I think the law was neuer so that a man should haue any suche accion against the kinge. For Bracton which wrote in king H. 3. time or nere thereupon, saith in his. iii. booke vnder ỹ title Contra quẽ cõpetit assisa in this wise: Inter cetera videndum est quis sit ille qui deiecit, Princeps ex potẽtia, vel aliquis nomine suo, vel iudex qui malẽ iudicauerit, an priuata persona, si princeps vel rex vel alius qui superiorem non habuerit nisi deum, contra ipsũ non habebitur remedium per assisam, imo tantum erit locus supplicationi, vt factum suum corriget et emendet, quod si non fecerit, sufficiat ei pro pena quod deum expectet vltorem, qui dicit, mihi vindictam et ego retribuam, nisi sit qui dicat quod vniuersitas regni et Barronagium suum facere possit et debeat in Curia ipsius regis, sed si alius ex facto et disseisina principis statim vel ex post facto in seisinam institerit, quamuis talis incidat in assisam et in penam vel tantum ad restitutionem secundum quod seisina ad ipsũ peruenerit statim vel

M 43 E. 3. 19

A. 20. H. 3. ti. assise. in Fitz p. 431

M. 24. E. 3. f. 23

H. 22. E. 3. f 3

ex post facto sine principe tamen conueniri non poterit per assisam, quia licet quodamodo disseisinam fecerit tamen non per se sed cum alio. s. cum principe et ita quod sine eo respõdere non potuit, et ita non procedit assisa. Indirecte tamen et quasi ex incidenti et sine breui comprehendi poterit persona principis ad hoc quod factum suum emendet, vel in psonam suam redũdabit iniuria manifeste, vt ecce. Esto quod impetretur assisa tantum super eum ad quem res translata est sine principe, et qui tenetur ad restitutionem et ad penam, vel ad minus ad restitutionem, et ipse respondeat quod sine principe qui fecit iniuriam per se vel per suos respondere non debeat, quia ipse princeps per se fecit iniuriam vel ipsi duo insimul, extunc erit factum et iniuria in manu domini regis, qui dici debet in facto quasi warrantus, et quod tunc poterit si warrantus voluerit factum suum emendare quasi a lege compulsus, et quam in persona sua cum sit ei subiectus debet firmiter obseruare. So that by Bracton it appeareth that no accion lyeth against the kinge but the partye greeued is driuen to sue to the king by petition. But the reason why that aduowsons shoulde passe in the kings case by the order of the common lawe thoughe it were not expressed in the graunt was this I suppose, because that landes or tenementes were not then compted as thinges that touched the roiall estate or that made the kynges crowne lyke as Liberties or fraunchises did. For the one a comon persone might haue as well as the kinge, but the other none might haue but the king or suche as were able to shewe his grant therof, and therefore saith Bracton in his first booke vnder the title que res dari possint that for landes currit tempus contra regem sicut contra quamlibet priuatam personam Which is as much to say, that if the king had right to any such landes or tenementes and hadde surcessed his time so longe, that it exceeded the time of limitation in a writte of right, his highnes hadde lost then his right for euer. And herewith agreeth Briton fo. 29. But that is (saith Britton) of landes, parcell of the kinges eschetes or pourchased

antea. 32. b

landes

landes, and not of the auncient demeasnes of his crowne, for of those nullum currit ei tempus, if hee haue anye righte to demaunde them. So that by Britton this reason will not serue for landes parcel of the crowne. Ideo quere verã rationem. Howbeit since this statute made, what landes soeuer they be those thinges that are comprised in this statut passe not without making expresse mention therof. Hetherto we haue spoken of the reason why at the common lawe aduowsons shoulde passe by graunt of the manour without being named, now let vs see how since the makinge of this statute it shal lykewise passe by graunt of the manour without being expressely named and how not. And if the kinge render vp to him that was in warde, at ful age, his landes, or to a bishopp his temporalties, although he make no mencion of knights fees or auousons, yet all passe therwith, for like as the kinges seising in suche case is by these woordes omnia terrá et tenementa, without speakinge of fees or auowsons, euen so being sued out of his handes by these woordes, omnia terrá et tenementa, fees and auowsõ Liuerie p.7.
do passe without making any mencion thereof. And this ap & T 16 E.3.
fo.67.B peareth. 5. E. 3. f. 16. of the same king. Where after the death p.30.
of an vocat, the king rendred againe the lands to the heire not making mẽtion of fees or auousons, & yet he had them. And likewise 41. et 44. E. 3. the kinge graunted the temporalties to one that was elect bishop before he was cõsecrat, H. 41. E. 3. f. g. h
& aiudged ỳ fees & aduousons passed wout making any mẽ- 44. E. 3. f. 22.
cion therof, & yet at ỳ time of the graunt he was not bishop, for he lacked consecracion. And ỳ reson in all these cases is, for that ỳ king was but seised in another bodies righte and by his liuerie he geueth nothinge vnto them but only restoreth thẽ to their right they had before. Like lawe shoulde it ap-
7. C pere to be by Finchden. 29. E. 3. If auowsõ of a church be ap- H. 29. E. 3. in
pẽdãt to a Priorie which Priorie is seised into ỳ kings hãds Fitz. ti. Quaby reso ỳ an alie is patron of it, & afterward ỳ king dimiseth re impedit
the p. 190.

the saide Priorie cum pertineñ, not makinge mention of thauouson vnto the saide Prior yelding a rent, to haue & to hold the same during the warre. And his reason is this, for that ỳ right & freehold in this case remaineth still in ỳ Prior out notwithstandinge any such seisin, & the kinge is but to haue an annuel profit therof, & no right, but if anye bee to sue dower or liuerie w̄ a partition out of the kinges hãdes they by that cannot haue thauouson if mencion be not ther of made, no more than they can that claim by Graunt: and yet the king rendreth them the thing in respect of a right before, as he doth in ỳ other cases. But what then: they claim not ỳ whole lande that is in the kinges hands but only parcell therof, & then thauouson euermore abydeth with that that remaines, if expresse mencion be not made therof, and so not like the cases before where the king makes liuerie of the whole. And this case appeareth also in the said booke of 5. E. 3. And note that in al cases wher ỳ king seiseth a thing as his owne proper right as he doth in the case of wardes, eschete, & such like, there nothinge passeth by Graunt of the appurtenance if expresse mencion be not made of the thinge that is appurtenant by name: & therfore the case was. 29. E 3. That where auowson of a church did belong to a Priorie which Priorie was seised into ỳ kings hãds ratione guerre, & letten againe to ferme for a rent to ỳ Prior, & afterward the king graunted away the patronage of the Priorie to a man & to his heires, & the custodie (duringe the warre) of ỳ Priorie with al that belongeth to the same & of the rent reserued w̄ al the profites of ỳ Priorie ỳ the king had seised, & yet thought ỳ thauouso̅ passed not, for ỳ it was not named. But if there be woordes in the kings grant that do amount to as much as therpresse naming of ỳ thinge or conteruaile as much, then the thing passeth as farre fourth as if it were expressely named. And therefore if a maner to the which auowso̅ is appendant be in ỳ kings hands by eschete or purchase & the king geueth the manour as fully & as wholly as

6. 3. 44. fol. 7

suche

such a one held the same before the schete or pourchase, in this case thauouson passeth, & so it is agreed. 43. E. 3. fo. 22. & 43 ass. p. 10. And learne for asmuch as this statute maketh mẽciõ but of three thinges, that is to say, knights fees, auowsons of churches, & dowers, whether in such case any other thinge than auouson which is appendant or appurtenant should passe by woords cũ ptiñ without naming of it. For it appereth. 18 H. 6. that where a Lete was wiñ a towne & the king granted ꝑ towne cum ptiñ not naming ꝑ Lete, & it was thought the Lete should passe thereby. But ꝑ reason was there because it was parcel of the towne, & that ꝑ is parcel or incidẽt to an other thing, passeth by graũt of ꝑ king wout making any mencion therof. And therfore if ꝑ king be seised of a corrodie by reason ꝑ he is a patron of a ꝓrie, & graunteth away ꝑ patronage wout making any mencion of ꝑ Corody, yet ꝑ grãtee shal haue ꝑ corodie: & so it is aiudged. 26. li. ass. & yet ꝑ kings grãtee of a ward shal not haue gard ꝑ cause de gard if erpresse mention be not made therof. And so is it if one bee to haue restitucion of the auouson vna cũ exit' & the church becometh void, & the king makes him restitution wo the meane issues & profits taken, yet he shal not haue this auoidance ꝑ is so fallen wout erpresse mencion be made therof in his restitucion, as appeareth. 18. 24. 39. et. 46. E. 3. And yet if ꝑ king be seised of auowsõ & the church becõmeth void & he granteth ꝑ auowson away, his highnes shal not nowe put nor take the benefite of ꝑ auoidance, as appereth. 9. E. 3 in Fitz. ti. Presẽtmẽt al esgl' p. 5. Therfore enquire what the reson is of these diuersities & what is ment by these woordes in ꝑ statut Doribus cũ acciderit ad predictũ maneriũ vel terram ptiñ. For as I suppose those woordes serue to none other purpose but wher ꝑ king is to assigne dower, & he grãteth ouer ꝑ maner Durante minore etate of the heire ꝑ is in ward to another, this patentee shal not haue thassignement of dower if menciõ be not made therof in his patẽt. Howbeit learne & enquire what is ꝑ true meanig of the said woordes.

5 E. 3. 32. b. & 43 ass. p. 10.

P 18. H. 6. 13. 2 a. Ayscam mes Newton contra.

26. li. ass. p. 53

fitzh. 33. H. 8.

P. 18. E. 3. 21. a. h

P. 24. E. 3. 26. F.

M 39 E. 3. 28. h.

P. 46. E. 3. in Fitz. Graunt p. 50. 7 E. 3. 14. &

fo. 26

The

The laste chapiter.

ITem Rex habebit omnia catalla felonum damnatorū et fugitiuorum vbicunque fuerint inuenta, et si ipsi habeant liberum tenementum tunc illud statim capietur in manum domini regis, et Rex habebit omnes exitus eiusdem per vnum annum et vnum diem, et tenementum illud vastabitur et destruetur de domibus, boscis et gardinis, et aliis quibuscunque ad predictum tenementum spectantibus, exceptis hominibus quorundam priuilegiatorum inde per regem. Et postquam dominus rex habuerit annum, diem et vastum, tunc reddatur tenementum illud capitali domino feodi illius nisi prius faciat finem pro anno die et vasto: de consuetud' tamen dicitur quod post annum et diem terre et tenementa felonum in Gloč reddentur et reuertentur proximo heredi, cui debuerant descendisse si felonia facta non fuisset, Et in Kent **in Gauelkinde the father to the boughe, the sonne to the ploughe.** Ibidem omnes heredes masculi participabunt hereditatem eorum, et similiter femine: sed femine non participabūt cum masculis. Et mulier habebit post mortē viri medietatem pro dote sua, Et si mulier fornicetur in viduitate perdet dotem suam, vel si sit desponsata viro. **Beefore this statute** Glanuil **did write in this wise in his vii. booke vnder the tytle** De vltimis heredibus. Notandum quód si quis de felonia conuictus fuerit, vel confessus in curia et de domino rege tenuerit in Capite, tunc tam terra quām omnes res mobiles sue et catalla penes quemcunque inueniantur, ad opus domini Regis capientur sine omni recuperatione alicuius heredis sui, si autem de alio quām de rege tenuerit is qui vtlagatus est vel de felo-

de felonia conuictus tunc quoque omnes res eius mobiles Regis erunt. Terra autem per vnum annum remanebit in manu domini regis. Elapso autem anno, terra eadem ad rectum dominū scilicet ad ipsum de cuius feodo est reuertetur, veruntamen cum domorum subuersione et arborum extirpatione. Et generaliter quotiescunque aliquis aliquid fecerit vel dixerit in curia propter quod per iudicium curiæ exheredatus fuerit, hereditas eius ad dominum feodi de quo illa tenetur tanquam Eschaeta solet reuerti. Foriffactura autem filii et heredis alicuius patrem non exheredat, neque fratrem neque alium quam se ipsum. Preterea si de furto fuerit aliquis condemnatus, res eius mobiles, et omnia catalla sua vicecomiti prouincię remanere solent, terrā autem si quę fuerit dominus feodi recuperabit statim non expectato Anno. By this it should appere that in Glanuiles tyme, for theft onelye the shirife shoulde haue the goods that were forfaite, and that as it shoulde seeme to his owne vse, and not to the kinges. For hee saieth, the lordes in that case shoulde recouer their eschetes before the yere, daye, and the waft. Howbeit, the statute made since that time geues all felones goodes to the kinge without anye exception. And hereuppon it is to be seene firste what is comprysed in thys woorde catalla. Catalla is a generall woorde whiche comprehendes as well Chatels mouable as not moueable. For leases for terme of yeares are within this woord catalla, as appeareth by Bracton in his seconde booke in the tytle of Forfaiture of Felons sayeng quod terminum annorum erit domini regis, vt catalla. Quia accipit terminum ad similitudinē catallorum. And therewith agreeth the booke in. 39 H.6. Also vnder this woorde catalla is taken the issues and profites of landes and tenementes of them yᵗ flye for felony vntill suche time as they bee attainted or acquited. And like wise of the Landes and tenementes of clerkes conuicte, vntill suche tyme as hee hath made hys purgation, I meane

Catalla.

Hōmes a pfent de terres &c 39.H.6. fueris p ceste parole Catalla.

meane lands & tenements as wel of their wines right as of their own right, & so is the booke. 4. E. 2. et 31. E. 3. Also vnder this word contra are take the emblements ỳ were growing vpō the ground at the time ỳ the forfaiture of ỳ goods first began to take place, as appereth 3. E. 3. Also vnder this word Catalla is cōprised a right of actiō to goodes, as wher goods be taken away wrongfully frō the felon, or wher one is endetted to the felon by obligacion, or is accomptable to ỳ felon for any receites or otherwise, & this appeareth. 6. H. 7. et. 19. H. 6. Also vnder this word Catalla, is take sometims goodes wherin the felon hath no propertie, as if a man deliuer money out of a bagg, or corne out of a sacke to one to kepe which is afterwardes attainted of felonye, the money or corne in this case is forfaited. Like law it is if a thief that steales goodes seuerally from sundry persons & afterwarde is attainted for one of ỳ said felonies, by this one attainder the goodes that are stolen from the other bee also forfaited to the king. Like lawe is it if one steale goods and before he be attainted therof he killeth him selfe, or dyeth in prison, or abiures the realme confessinge an other felonie then that for the which he fled to the churche, in these cases he forfaiteth the gooddes that hee did steale. So it is if the wife kill her husbande, shee forfaites the goodes of her husbande. And these cases ye maye see in the title of Corone in Fitz. p. 317. 323. 334. 318. 162. 319. 380. 379. 423. And in the title of Auowrie p. 151. And in the title of Forfaiture p. 15. Then let vs see further what may be saide vppon this word Felonum. If thoffence that is committed be felony, then is it properlye within the compas of this woorde Felonum, & he that committes thoffence shalbe saide Felo. Notwithstanding that he therefore shal not suffer death: as in a case where one killeth another se defendendo or by mis aduenture, this offence is felony, and hee that committes it shal forfait his goodes notwithstanding that hee obtayne pardons

P. 4. E. 2. in Fitz. Forfaiture. p. 16. 16. E. 3. Corone. p. 356, 296. et. 344.

P. 6. H. 7. in Fitz ti. Forfaiture. p. 12. M. 19. H. 6. fo. 47. et H. 30, H. 6. fo. 5. P. 28. E. 3. 92 et t. Trauers 32. lib. Ass. p. 33.

44. E. 3. f. 39. 26. li. ass. p. 32

felonum.

pardon of life. For it was at ꝯ kings pleasure to graunt pardon or not. And this appereth.15.E.3. But so shal not he that killeth one that woulde robbe him in his house, Or the officer that killeth one that will not be rested, nor hee that killeth any thing not yet borne, as a childe in his mothers bellye, nor the parsone that is straught that killeth another in his madnesse. For in all these cases it is not felonye. Coron. 116. Felonie.599. Dower. 183.

The woordes bee further, Damnatorũ & fugitiuorum. Sometimes the king shall haue his chatell, although he be not condemned of the felony, as if a man be arrested for felony and afterwardes breakes the arrest and the other ere hee can take him againe killes him, in this case hee that is killed shall forfaite his goodes, and yet hee was neuer attainted of thoffence. Like lawe is it if hee were killed in ꝯ first arrest where he woulde not bee arrested. And this appeareth.3.E.3. Howbeit since that tyme there was a statute made.anno.34.E.3.cap.12. Which seemes to alter the lawe in these cases if it bee not that you will say peraduenture that he shall forfait them quia fugam fecit. Ideo quere. Hee that is felo.de se shall forfaite his goodds and yet hee was neuer attainted. Like lawe is before, of the clerk conuict. And so is it of suche as stande mute or challenge aboue the nomber of.12 enquestes, as appeareth.34.Ed.3. Then further, this woorde fugitiuorum is taken suche as flee or withdraw themselues for the felonye that they bee endyted, appealed or accused of, for that makes a great presumpcion against them, as Bracton saieth in his seconde booke vnder the title Ad quę restituatur vtlagatus, and for that presumption sake shall the vtlawrie proceade whether hee bee giltye of the felonye or not. And also saieth hee in the saide booke quód vtlagati de felonia gerunt caput lupinum, & secum suum portant iudicium, ita quod sine iudiciali inquisitione pereunt, quia merito sine lege pereũt, qui secundum legem viuere recusauerunt, et hoc ita si in capiendo fugiant vel

Coró.p.312. et.p.290. H 34 E.3.in Fitz.Eschet. p.10.

Damnatorũ.

fugitiuorũ.

vel se defendant. Si autem viui capti fuerint vel se reddiderint, vita illorum et mors est in manu domini Regis, et qui taliter captum interfecerit respondebit pro eo sicut pro alio nisi sit in locis vbi consuetudo se habeat in contrarium. videlicet in com̃ Hereford et Glouc̃.

35 h6. 58. a.

And in an other place hee saieth, Quod nullum crimen maius inobedientia, quia pro contemptu et inobedientia poterit quis excommunicari, sicut pro quolibet peccato mortale, cum omnes subditi debeant esse Regi tanquam precellenti, maxime in honestis, et ducibus eius tanquam ab eo missis, et sic concordat lex diuina aliquantulum cum humana. And also saieth quod vtlagatus de felonia foriffacit patriam et amicos, foriffacit quę pacis sunt, foriffacit quę legis sunt, foriffacit quę iuris sunt, et possessionis, et foriffacit actionem ante vtlagariam sibi datam. Thus by the waye haue I noted vnto you suche thinges out of Bracton, as mee seemeth bee notable, and make somewhat for this purpose: Althoughe I needed not to haue gone so farre as to outlawrie for exposition of this woorde fugitiuorum, but might haue rested at the flyenge. For if one flee for the deathe of a man, and this presented before the Coronor, hee shall forfait all his goodes that hee hadde the daye of that presentment or at anye time since, till hee bee acquited of the saide deathe. And notwithstandynge that an enquest vppon hys atrainement doth afterwarde acquyte him, and also fynde that hee did not flee, yet his goodes remaine still forfait, as it appeareth. 22. lib. Assise. p. 96. ct. 3. Edwarde the thirde. Lyke law is it where one arrayned of felonye beefore iustices is founde not guilty of the felonye, howbeit it is founde that hee withdrewe himselfe for the saide felonye, nowe shall hee forfaite his goodes, but no profites of landes as hee shall doo in the other case where it is found beefore the Coronor, For when the forfaiture

Forfaiture. 32. et. 35. Coron. 296. & 344

shal

shall haue no further relacion, but to the daye of the pre-
sentment and not to the daye of the flyenge, then when at
the same daye hee is acquited of the felonye, then is the
kynges title gone as to the landes and so consequentlye
gone as to the issues. And this appeareth. 3. Edwarde. 3. Coron. 344
Also there is an other maner of fleeynge, for the whyche
a manne shall forfait his goodes, and that is where in ap-
peale or enditement of felonye, the partye that is appea-
led or endited will not appeare, but suffer the erigent to be
awarded against him, hee thereby forfaiteth hys gooddes
and the profites of hys landes, whiche he hadde the daye of
therigent awarded, or at anye tyme after. And notwyth-
standinge that hee afterwardes happen to bee acquyted of
the sayde felonye, yet the forfaiture remaines, For when
hee tarrieth the awardynge of therigent it appearethe of
recorde that her hath withdrawen hymselfe, and thys 43 E3. 17. K.
you shall fynde in. 22. lib. Ass. pl. 81. and 41. li. Assise. 41. Ass. p. 18.
Nolwbeit herein is there heede to bee taken lest there bee
errour in the awardynge of the saide Erigent: For if there
bee, hee shall then forfait nothinge, as if the erigent bee a-
warded againste the accessorie beefore it bee awarded a-
gainst the principall, or beefore the principall bee attayn-
ted, or if an erigent bee awarded againste one that hathe a
charter of pardone for the felony of elder date, than is the
awardynge of therigent and hath founde suertye accor-
dynge to the statute and the same retourned into the chan-
cerye beefore therigent awarded: For in these cases he shall P 43 E. 3. [illegible] 17.
auoyde the forfaiture vppon the matter shewed.
Contrarye lawe it is if after the erigent awarded the ap-
pelle doe abate for insufficience, or for that that hee that is
outlawed was emprisoned meane betweene the awar-
dynge of the erigent and the outlawrie pronounced.

For

Forfaiture. 31.et.19.

For in that case if he reuerse the vtlarie, yet his goodes remain still forfait. Howbeit if he were emprisoned at ỳ time of the erigent awarded otherwise it is, & this appereth.19. E.3. and.30.H.6. Also it is to bee noted that one maye flee for felonye and yet hee shal forfait nothinge, as where one is arrested for suspicion of felonye and escapes, yet for thys hee shall not forfait his goodes if hee were not taken with the maner, or at the sute of the partie, or endited of the same as it appeareth.42.li. Ass. Quere if hee bee endited afterwarde whether hee shall then forfait them or not. Also an accessorie after the felonye committed shal forfait nothinge vppon a Fugam fecit. Otherwise it is of accessories beefore the felonye committed, as it appeareth 4.H.7. But he that withdraweth him selfe but for Petit larcenie shall forfayte his goodes, as it appeareth.8.E.2. tamen quere. And note for a generall rule that the townеship where the goodes of felones or fugitiues bee founde shal alwaies aunswere the kinge of them, and the shiriue, of the issues and profites of the landes: and therefore the townеship may seise them for the kinge. For it is no plee for them to saye they were not deliuered vnto them. And this appeareth in Fitzherbert, in the title of Coroner pl.390. et p.366. 300.347.290.308.22. and in the title of forfaiture pl.32. But at what tyme the goods of a felone or fugitiue shalbee seised it is further to bee seene and howe the attainder shall haue relation. When it is founde by enquest beefore the coroners quod fugam fecit, by and by the shiriue shall seise his lands into the kynges handes by woorde onelye without taking anye enquest for the same purpose, and also shall seise all his goodes into the kinges handes, and take an enquest as well of free menne as of villeines to apprise them and cause the prise to be enrolled to the coroners and to deliuer them to the townеship to make aunswere thereof to the kynge, And this appereth 22.lib.ass.pl.96. And herewith agreeth the statute of Coroners

Nota. fleyt & vncor mil forfeiture &c.

Coron. 224. p.5.

27 h8. 22. E.

Forfaitur. 10

Coron. 406

Com^t la ville ser a charge.

22. Ass. p. 81.

11. H. 4. 39

Temps del seisin.

ners

ners and also Britton.fo.4. Where you shall see this matter set fourthe more fully. And in. 43. it is sayde that the kinges minister may seise ỳ goods of a felō before attainder, & if the partie finde suertie then he to leaue them in the custodie of the partie or els in the neighbours custodie. For the sayd minister ought not to carrie them awaye with him. & 7.H.4. Hull sayeth ỳ yf one bee endited of felonie, yet till hee bee attainted his goods shal not be removed out of his house, but in the meane time shalbe in his neighbours keapinge and he to be found of the same. And in the Register there is a writte quod tenta et bona taliter capta videantur, imbreuientur et saluo custodiantur per balliuum ipsius capti qui se curitatem regi inueniēt ei respōdēd' si &c. saluis inde ipsi capto et familie sue necessariis quam diu fuerit in prisona. And so is Britton.fo.17. Howbeit now by ỳ statut made in the first yere of kinge Richarde.3. the thirde ca. it is ordeined ỳ none shall seise the goods of any person arrested or emprisoned before that they be attainted, or that the goods bee otherwise forfaited, vpō peine to pay the double value therof. This statute extendeth not to any other but too such as be in prison: For by the statute de proditionibus 25.E.3.ca.14. If one bee endited of felonie which is not emprisoned, the sheriue at ỳ second Cape shal seise his goods, and yet they bee not at that time forfaited. And also the statut of. R.3. doth not extend to landes but onely to goodes. Then for the relacion, as for the goodes it hath no relacion but onely from the daye that the forfaiture is presented or verdit geuen, and therfore it is sayd in 33. E.3. that if he sell them before hee bee attainted the sale is goode, but for landes it hathe relacion to ỳ daie of the felonie committed, be it that the attainder bee by verdite or vtlarie as it appereth. 38. E.3. et 30. H.6. or be it that he bee attainted without proces of law, as in the cases aboue remēbred where he is killed in the fleing, as appereth 3. E.3. And note that if thattainder and the office found of his landes be

M.43.E.3. fo.21.

T.7.H.4. fo.41.

Relacion de Attayndez.

Forfeture, 30 30.H.6.f.5 38 E.3.fo.37. Corone.290 et 285.

both wõ the yere of the felonie firſt cõmitted ꝑ it ſhal haue no relacion ſo⁹ that yeres ꝓfites, otherwiſe it is if it be after ꝑ yere, as it appereth 3. E. 3. This boke muſt be vnderſtãde as I take it where the attainder & the office be before any daye of payemẽt within ꝑ yere. The wo⁹ds of this chapter be further: Et ipſi habeant liberũ teñtũ tunc illud ſtatim capietur in manum domini regis et rex habebit omnes exitus eiuſdem per vnum annũ et vnum diem et tenementũ illud vaſtabitur et deſtruetur de domibus boſcis et gardinis et aliis quibuſcunque ad predictum tenementum ſpectãtibus: It ſhould appere by Glanuile in the beginning of this chapter that the common law was as much before the making herof in all caſes of felonī ſauig fe⁹ theft, in which in ꝑ king had no yere and daye. Howbeit after Glanuiles time the ſtatut of Magna carta was made which ſayd in the 2 2 chapter therof. Nos non tenebim⁹ terras illorum qui conuicti fuerint de felonia niſi per vnum annum et vnum diem et tunc reddantur terre ille dominis feodorum. By this it ſhould ſeme this ſtatute doth remitte ꝑ waſt becauſe it ſpeaketh nothing of it: o⁹ elſ perauenture you will ſaye that this wo⁹d Niſi argues and ꝓues ꝑ the kinge before the ſtatut of Magna carta might haue holdẽ it as longe as he would, but to the cõtrarie of that expoſition is Glanuile, as it appereth before: And alſo Bracton which wrote ſomwhat after this tyme: Fo⁹ by Bracton in his ſecond boke it appereth that before ꝑ making of the ſayd ſtatut of Magna carta the king had nothinge elſ but the waſt, and to thentent he ſhould remitte ꝑ waſt, the yere and day was afterward geuen to the kinge: Fo⁹ theſe be his wo⁹ds in the title of Vtlarie. Si vero terrã liberam habuerint vtlagati, ſtatim capienda eſt in manum domini regis et tenenda per vnum annum et vnum diem, ad capitales dominos poſt terminũ illũ reuerſura ſi de alio tenuerit quã de rege, ſi autẽ de rege tunc erit Eſchaeta ipſius regis, et hoc verũ eſt quod per talẽ terminũ remanebit in manu domini regis niſi ipſe capitalis dominus vel alius finẽ fecerit pro termino regi habendo, ſed queſit cauſa quare terra remanebit

An, foure, & waſte

bit in manu domini regis, videtur quod talis est, quia reuera cū quis fuerit cōuictus de aliqua felonia in potestate domini regis erit prosternandi edificia, extirpandi gardina, et arandi prata, et quoniā huiusmodi vrgebantur in graue dānum dominorū, pro cōmuni vtilitate prouisū fuit quod huiusmodi dura et grauia remanerent, et quod domin⁹ rex propter hoc haberet cōmoditatē totius terre illius per vnū annū et vnū diē, et sic omnia cū integritate reuerterētur in manus capitaliū dominorū, nunc autē petitur vtrū. 6. finis pro termino et similiter pro vasto. Et nō video rationē quare, nisi quod terminus bene poterit esse per se sine vasto, eō quod fugitiuus et vtlagatus non solū delinquit erga eū qui sequitur et appellat, sed erga regē cuius pacē infrīgit contra fidē suā cui tenetur, quia quilibet cū faciat sacramētū, iurat salua fide domini regis. Thus our autors agre not vpō this yere & day, for Bracton is contrarie to Glanuille ỳ wrote before him. Howbeit Brittō which was likewise before ỳ making of this statut of Prerogatiua agreeth wt Bracton, as it appereth in his boke fo. 14. adding further ỳ the kinge shal not haue ỳ yere and day of land ỳ is holden only for terme of life or yeres, or by freshe disseisin, or in fee ferme, or in mortgag. And so is Bracton also therwt agreing in his secōd boke, but now sins the time this statut of prerogatiua was made, which geues the kinge as you may perceiue bothe the yeare day & the wast. And first he saieth quod rex habebit omnes exitus eiusdē per vnū annū et vnū diē. By this it should appere ỳ the kynge should not haue the issues of ỳ land but by a yere & a day, but yet it is clere ỳ he shal haue the issues also from ỳ time of ỳ felonie done vntil ỳ time his highnes hath had ỳ yere day & wast, & not ỳ lord (allowing ỳ that is to be alowed for ỳ finding of ỳ prisoner) for it can not be intēded ỳ ỳ lord shulde haue ỳ meane profits, because the lād shalbe deliuered vnto him wout profit, ỳ is to saye wasted & destroyed. And therwt agreeth the boke in 3. & 4. 9. E. 3. And there it appereth ỳ if an office be found 20. yeres after the attainder ỳ kinge shal haue the profites from ỳ time of the felonie cōmitted vntill

3. E. 3. in Fitzti. Corone 290 49. E. 3. fo. 117 [illegible] fitzh. 144. K. con.

the yeare and daye next after the office founde. For though the lord be entitled to haue the eschete, yet the kinges title for the yeare daye and waste goeth before the lordes: For the wordes bee Postquam dominus rex habuerit annum diem et vastum tunc reddatur tenitum illud capitali domino Also by this worde Reddatur it semes the lord can not enter into his escheate after office found, but is driuen too sue an ousterle main for the same out of the kinges handes, as it appereth 8.E.2. but if a stranger abate before office, the lord shal haue a writ of eschete against him and recouer, and yet that not withstanding when an office shalbe founde, afterwarde the kinge may seise for the yere, daye and waste, and shalbe aunswered of the mesne profytes, like as it is when the kinges tenant in chief dyeth his heir of full age an estrãger abateth, the heier maye haue assise of mort dauncestore if he will, and recouer against the abator, and yet vpon an office found afterward the kinge shall seise for primer season and be answered of all the meane profites, and the heir driuen to sue liuerie. Further then let vs see in what cases the kinge shall haue annum, diem et vastum and in what not. The kinge shall not haue annum, diem et vastum of clerks cõuict after verdit, because hee forfetes no land. Like lawe is it of lands in Gauelkinde where the father is hanged, but otherwise it is if he be outlawed or abiured for felonie, for there the kinge shal haue the yeare, daie & waste, and this appereth 3.E.3.et 8.E.2. If the husband be atteinted of felonie the kinge shall haue the yeare, daye and waste of the lãds of the wife, and yet in ỳ case the lordes shall not haue theyr eschetes. But what then? the husbãd might haue done waste and the wife had had no remedie for the same, and by the same reason the kinge maye doe as much, and this appeareth 3.E.3. And also in Bracton in his second boke. And also it shoulde there appeare that the wiefe is driuen to sue an ouster le main after the death of her husbande. If one be arested

8.E.2.in Fitz ti. Trauers Pl.48.

3.E.3.in Fitz ti.corone. P.332.et Prescription. P.50.

3.E.3.in Fitz ti.corone. P.327.

ted for felonie & brekes the areſt, ſo ỳ in the purſuyt of him he is killed becauſe hee woulde not otherwiſe be taken, the king in this caſe ſhal haue the yere, day and waſt, as it appereth. 3. E. 3. If a man cõmit felonie and hathe his charter of pardon, yet the king ſhal haue the yeare, day & waſt and the lordes theyr eſchetes, & this appereth 3. E. 3. for the pardõ doth not reſtore him but to the lawe. For though the kinge would pardon him with words of reſtitucion, yet his grace could not therby reſtore him to the lãds holdẽ of other. And note ỳ the king ſhal haue the yere, day & waſt of lãds in ancíẽt demeſne if it ſo be ỳ the tenãt myght haue ſold the ſaid lands againſt the will of the lord, as it appereth. 3. E. 3. and that notwſtanding ỳ the ſayd lands were alwayes vſed to be ſurrendred by ỳ rodde & to paſſe by ſurrẽder. The words of the ſtatute be further Exceptis hominibus quorũ dã priuilegiatorũ inde p regẽ. That is as much to ſay except ſuch as haue Bona et cattalla felonũ by the kynges graunte for a man can not preſcribe to haue Bona et catalla felonũ, as appereth. 46. E. 3. 1. H. 7. 8. H. 4. nor none may haue this prerogatiue of yere, day & waſt but only the kinge although hee would claime it by charter frõ the kinge or otherwiſe, as it appereth 3. E. 3. But when the king is ſeiſed of it he may cõmit it ouer, as appereth by Bracton in his ſayd 2. boke. But if the land wherof the kinge ſhould haue the yere, day and waſt be vnder the yerely value of iii s. iiii. d it is vſed to bee remitted for the ſmallneſſe and ſimpleneſſe of the thinge, as appereth. 3. E. 3. for it ſhoulde coſt more the ſuing of it out of the kinges handes than the thing is worth. And note the cuſtõe of Gloc' compriſed in this ſtatut, wherby it ſhould appere that notwithſtanding any ſuch cuſtome yet the king ſhould haue annũ et dié but not ſo of lãds in Gauelkinde as I haue ſayd before.

3. E. 3. in Fitz ti. Corone. P. 312. et 290 et 308.

3. E. 3. in Fitz ti. Corone. P. 310.

46. E. 3. f. 14. 1. H. 6 fo. 12. M. 8. H. 4. f. 1 Corone. 31.

3. E. 3. in Fitz ti. Corone. P. 327.

Proces to bee sued after the deathe of the kinges tenaunt in chiefe.

By a statute made in the 33. yere of the late kinge of most famous memorie, H.8. the 22. chapter it is ordeined and prouided amõge other things, that no person or persons hauing lands or tenemẽts aboue the yerely value of fiue poundes shal haue or sue any liuerie before inquisitiõ or office found before thes chetour or other commissioner or commissioners by vertue of the kinges writ or commission too bee directed out of the kinges chaũcerie or other courtes hauing authoritie to mak suche writes or commissions for suinge of liueries, which writs or commissions shal not passe out of the chancerie nor any other courts but by a warrant or bill too bee assigned and subscribed with the handes and names of the master of the kinges wardes and liueries, surueiour of hisliueries, or the attourne and resceiuor of the court of the wardes and liueries, or three, twoo, or one of them, to bee directed & deliuered to the chanceller of England or to any other chancelez or officer hauig power to awarde such writes: And if ỹ lands or tenements wherof any inquisition is to be had by vertue of any such writ or commission excede the yerely value of fiue poundes that then such as sue for such writes and commissions shal pay for the seale and writing ther of such fees as hath ben accustomed. And if ỹ sayd lãds & tenemẽts wherof any such inquisitions and offices ar to be found by vertue of any such writ or commission excede not the sayde yerely value of x pounde, thẽ such as shal sue for such writs or commissions shall paye for the seale of euery of them vi.d and for the writinge vi.d and not aboue. This statut doth not

not set fourth the name of the writ or cõmissiõ that shalbee sued, howbeit these words that follow, that is to saye (for suinge of liueries) do somwhat open the minde of the makers of this statute, and declare that their meaninge was of the diem clausit and such other writs or cõmissions as serue for that purpose, and not of euery writ or cõmissiõ, for so might an office be found by a wrõg writ or cõmissiõ, which should want mater or be other wise insufficient to make liueries. But learne and enquire if after a good writ or cõmissiõ sued fourth, the office that is found is not sufficient, whether the partie shal haue his liuerī or not without suing a melius inquirendũ, or a new office, because that some parauenture wil say ỹ the words of the statut be performed ỹ is to wite an office or inquisition is found. But to that it may be answered and sayd that ỹ it is no office when it is insufficient at least wise toward the partie that should sue liuerie therupon, although it be a good office toward the kinge if any thing therin conteined be for his benefit. And learne also if the kinges tenant dye seised of landes in diuerse counties whether by force of this statut he shal cause an iquisitiõ or office to be foũd in euerī coũtie where ỹ lands lye, for so is it vsed to be done vpõ al general liueries, & he that sueth his general liuerie otherwise missueth the same, and is an intruder vpon ỹ kigs possessiõ: howbeit perauẽture you wil say ỹ if the lãds excede ỹ yerely value of .xx. marks he must sue a specyal liuerie & not a general, & therfore it makes no mater for the inquisitiõ or office, & that the words of the statute wil beare it wel enough if there be but one office foũd. But as to ỹ it may be sayd, ỹ the meaning of ỹ statute was not so, for ỹ kinge can neuer be fulli ẽformed of his title vnlesse ther be an office foũd in euery shere, & also by finding of seueral offices one record may be better for the kinge then an other, wherof his grace may take anãtage, for the best shal be takẽ for ỹ kinge. Thus it appereth by statut how that of

2 lxx

2 lxx.

Note. 58. f 9.

landes aboue the yereli value of .l. li. inquisicio̅ must be made and an office found after the death of the kinges tenant be fore liuerie can be had: and that must be by a writ of die̅ clausit extremum, for that is the proper writ that is to be sued for that purpose if any sute be made within the yeare after the kinges tenants death, or a special commission in the nature of the writ of diem clausit. For vpon a general cōmissiō to enquire generally of all wards no perticular person can haue liuere. And if he tarry till after the yere, then he cānot pursue any of these, but for his remedie must sue a writ called Mandamus or a commission in nature of that writ, and therupon to cause an office to be foūd and so to haue liuerie: But if an office be once found by diem clausit and the heier dieth in the kinges ward, his heir must sue Deuenerunt & no Mandamus although it be after the yere of ẏ death of him that dyed in ward, and so is the rule in the register. Sumetymes it happeneth ẏ after deliuerie of the writ or commission and before office found the escheator dyeth or is remoued frō his office, in which case then ẏ proces ẏ is awarded to his successor is a writ called Datur nobis intelligi, but if office be foūd before his death or remouing, which office is not returned, then shall therbe a certiorari awarded to his executors to returne the same. For it is a mater of record as sone as ẏ iurors haue put their seales vnto it, notwithstanding it be not returned. And note ẏ thawardig of this writ of diem clausit or special cōmissiō is peremptorie to him ẏ sueth for it. For if he lese it or be taken frō him with force he gettes no moe writs or cōmissiōs for the lands in that cōtie, and this appereth in the new Natura breuiū fo. 2[illegible]. Howbeit in 14. E. 4. it is touched by the waye that in such cases he should haue a new writ. ideo quere. But after office ones foūd by a die̅ clausit or specyal commissiō as well the kinge & partie therby are boūd as euery other stranger: for so much lādes as are comprised within the office, and neither the kinge ne ẏ partie

fitzh. 253. b. aa

fitzh. 253. B. aa

H. 14. E. 4. fo. 5.

tie nor any other shal haue any moe writs or cõmissiõs to enquire any further of these lands, except it be in such cases as I shal hereafter recite, for so the lawe shoulde neuer haue end, but newe heires might be founde euery daye by office which were incõuenient and the king should not knowe to whõe to make liuerie, & this appereth. 14. E. 4. and 2. et 4. H. 7. But where after office found it is surmised for ỳ kinge that his highnes hath a better title than was found for him by the first office, whether ỳ mater surmised may stand wt ỳ mater foũd by the first office or not, yea although it be mere cõtrariãt or repugnãt it is not material: But in such cases a new writ or cõmissiõ shalbe awarded. As take the case to bee this. By the first office it is found the kinges tenaunt in chiefe dyed seised his heir wtin age where in dede hee dyed without heir so ỳ therby the lands ought to haue escheted to the kinge, or that he was tenãt in taile & dyed without issus of his body, wherby the lands ought to haue reuerted vntoo the kinge, in these cases the court shal awarde a new writ or cõmissiõ for the kinge. Like law is it where the daughter is foũd heir by office & afterward ỳ sonne is borne, or where ther is but one daughter found heire by office where there ought to haue ben two foũd heires, or if by ỳ first office one is foũd heire & of ful age which is not heir in dede, but an other is heir which is within age: In all these cases ther shal be a new writ or cõmissiõ awarded Causa qua supra, as it may appere. 14. E, 4. et 4. H. 7. 12. R. 2 et 30, 11. all. yea and a more strõger case as it should appere in the new Natura brevium fo. 2[illegible]. fo. 2[illegible]. et f, 295. that is to say, where the kinge was to haue no benefit at all more then he had by the first office, and yet a newe commission was awarded, and therfore the case was there, the second brother was founde heir by the first office & of ful age, now the eldest had a commission being also of full age to finde him heir, and therupon had his liuery. So is it where 2. be foũd daughters and heirs to one mã of certain lãds where in dede parcel of the

14. E. 4. f. 5
2. H. 7. f. 2. 4.
4. H. 7. f. 13.

14. E. 4. f. 5
4. H. 7. f. 13.

POST. 57. qh. &c. 61. D.

sayd

said land was geuen to one of the said .2. daughters in frãk mariage, now she that claimed the frank mariage had a speeyall cõmission to enquire of the sãe: and yet by that second office ỹ king had no benefit ideo quere. For this Natura breuiũ semeth to impugne ỹ bokes before rehersed. And like as he may pray a newe writ or cõmission in ỹ cases aboue rehersed before liuerie had, euen so may he do in the like cases after liuere had if the liuerie be a general liuerie, & therupõ as sone as the title is found the king shal resetse: but not wout a Scire facias because the statut made at Lincoln hath so prouided as I shall open more fully when I come too that place, and ỹ in all these aforesayd cases a new diem clausit may be as wel awarded as a new cõmission, as it appereth titulo Trauser in Fitz. pl'. 28. anno. 29. li. Ass.

1 What thing shalbe in ỹ king without office or seasure &
2 what not, and where by an office only without any seasure
or other proces the kinge shalbe in possessiõ and where not,
3 and where he shalbe in possession without an office but
not before a seasure, and how the kinge may be ẽtitled
4 by any other recorde as well as by an office, and
5 where a man may enter as well vpon the
kynges possession as any other. Ca. 2.

By a statute made the .33. yere of the late kinge of famous memorie hy. 8. the 20. chapter it is among other things prouided that if any person or persons shalbe attainted of hye treson by the course of the comon lawes or statutes of this realme, that in euery such case euery suche attainder by the cõmon law shalbe of as good strength, valne force and effect as if it had ben done by authorite of parliament

ment. & ỹ the kinges maiestye, his heires and successors shall haue as much benefit & auãtage by such attainder as well of vses, rights, entres, cõditions, as possessions, reuercions remainders and all other things, as if it had ben done and declared by autoritie of parliamẽt: and shalbe demed and a iudged in actuall and reall possessiõ of the lands, tenemẽts, hereditamẽts, vses, goods, cattals & all other things of the of fẽdors so attaited which his highnes ought lawfully to haue and which they so being attainted ought or might lawfully lose and forfait if the attainder had ben done by authority of parliamẽt, without any office or inquisicion to be founde of the same, any law, statut or vse of the realme to the cõtrarye therof in ani wise notwĩstãdig. This statut maks it clere & without questiõ that in cases of hye treson the lãds of him that is attainted are in the kinge handby without any office. But for other attainder it remaines as it was at the cõmõ Law, and therfore lerne if one which holdeth of ỹ king be attainted of petit treson or felonie, whether in this case by that attainder his lands be in the king without office, and me semeth by attaider and death together they should be in the kinge in law, howbeit not in dede, vntill suche time his highnes seise themby his officer, or that an office bee therof foũd, for by that attainder the lands are forfaited to the kinge by mãter of record, and then when the partie dyeth either the freehold must be in suspence, or els aiudged in the king in lawe, for he that was seised hath corrupted his blood and is dead without heir, and therfore his highnes is become owner therof in lawe, and a possession in lawe vested in him of the same landes, which his highnes at his will and pleasure may make a possessiõ in dede as sõe as he will take vpon him knowledge of the sayd landes and sease them by his officer. And therfore the booke is agred 20. E. 4. that if he ỹ is attaynted be seised of auowsõs appendaũt, as sõe as ỹ church becometh voide ỹ king may present wout any office

Le Roy seisie sans office &c. or Seisure.

1

2 Ex.

20. E. 4. fo. 10

which

which proues ỹ ỹ kinge by thattainder was patron before any office found or els how could his highnes present: and I see no differẽce betwene lãds & auoulõs in this case, for auouson is not so transitorie toward the kinge, but ỹ he mai take the presentment therof at all times whẽ he will, quia nullum tẽpus ei occurrit. Howbeit lerne what the law will in this case, for many mẽ are of the contrarie opinion. And see the boke. 4. E. 4. cõcernig this mater. And so note what is sayd of a possession in law, for as I take it there may be a possession in law in the kinge as well as a possessiõ in dede, which possession in law is euer without office or any other mater of record, as whẽ the possessiõ is cast vpõ his highnes by a discẽt, reuerter, remaider, or escheit, or in title of his seignorie or prerogatiue, as for wardship, primer seisi, or for the custodie of the tẽporalties of a bishop during the time ỹ the see is vacant, in all these cases without any office or other mater of record here is a possession in law vested in ỹ kings highnes, ỹ is to say, for ỹ that doth descẽd, reuert, remain or eschet, the freholde is cast vpon him in lawe as it should be vpon a comon person in the like case, or els ỹ frehold should be in suspence, which may not be, & of the rest the possession in law of a cattell is in his highnes in right of his seignorie, which his highnes at his will and pleasure may make a possession in dede by entre or seasure, but not to make it a possession in dede by his graunt, because there is a statute made in the 18. yeare of H. 6. ca. 6. to the let therof, which prouideth ỹ all letters patents made of lãds & tenements before office foũd and returned, or within one month after but only too him that tendethe his trauerse shalbee voyde. This statute extendes only to landes and tenementes, therfore of the bodie of his warde his highnes may make a graunt notwithstandinge this statute as me seemeth, for that is neither lãd ne tenemẽt: also notwithstãdinge that this statute doth restraine the graunting of the lãds & tenemẽts, yet the

4. E. 4. 21.

Ass. 69. fo. 1

extendes

seisin

seisin therof remaines and is in ỹ kinge as it was by order of ỹ comon lawe which is as I sayd before in his highnes in lawe, although not in dede, vntil suchtime as he hath made a seasyn or an entree by his eschetour, or a graunt therof, which wayethe both to a seasure and a graunt, in such cases where the graunte maye bee goode and not restrained by statute, or vntill such time an office therof be found: For an office that entitleth the kinge to the possession is sufficient by it selfe without any seiser or entre of the eschetour to make a possession in deede in the kinge, if it be so that the possession were vacant when the office was founde. But if the possession were not vacāt, but an other thā he in whose right the kinge seiseth was tenant therof at the time of the findinge of the office, then must the kinge entre or sese by his officer before the possession in deede shalbee iudged in him: yea and if his highnes seise not by the space of a yeare and a daye after the findinge of the office, then maye he not seise without a Scire facias to bee pursued againſt him ỹ is tenāt therof. And of those maters you may see bokes 9 H.7.49. E.3.20. et 21. E.4.4. E.2.10. H.4.21. H.7.29. et 32.li. all. But heruppon is there a distinction to be made, whether that ỹ the king is ētitled vnto by office be a thinge manuell and wherof profit maye bee taken forthwith after the findinge of the office or not. For if it bee such a thinge as is not mānuel and wherof there is no profite too bee taken forthwith vntill such time it falleth, in that case althoughe the king be in possession of the right of the thing, yet is he not in possession of the profit therof vntill such time as his highnes actually by his officer when it falleth taketh and perceiueth the said profit, as for example. The thing ỹ king is entitled vnto by office is no land but auowson, rent or a comon, although that the kinge by this office be patron of thauouson or owner of the rent or comon, and therby when the benefice becometh voide may present, or when ỹ rēt daye

Lex officio sans seisme.

9.H.7. f.2.7
49.E.3. f.22.
20.E.4.f.10.
Estopel.255.
Trauers. 50.
32.Ass.P. 32.
29.Ass.P.30.
21.H.7,f.7.
P.21.E.4 f.1
Gard.P. 105
14 H7. 22.

cometh

cometh may receue the rent, or when the comō is to be take
may vse the said comō, yet if the office that entitleth his high
nes be false, and he that was in possession at time of the of-
fice take the profite when it falleth before the kinges offi-
cer do take it, in this case this takinge is no entrusyon vpon
the kynges possessions, for he was neuer seysed in deede:
wherefore being driuen to his accion if his highnes bringe
his Quare impedit or action of trespas, the defendant maye
trauerse the office with him in the said actions keping still
his possession, and neede not too sue in the chauncerie for the
trauersing of the same. This maye you see a Differens
betwene a thinge that is manuel and a thinge not manu
el, and what the reason therof should bee learne, for as I.
suppose the reason of it is no other but as I sayde before, ỹ
when a straunger is tenant at time of the office findynge
the office maketh no possession in deede in the kinge before
an entrie or a seiser. And then when the kinges officer ta-
keth not the profites when it falleth but suffreth him that
was in possession to take it, then was the kinge neuer sei-
sed, but he still remaines in possession that was possessed at
the time of the finding of the office vntill such time as seiser
bee made for the kinge, which can not bee done at all times
as it maye bee of land, but onely at such times as the profit
therof is too bee takē, that is to saye, when it fallethe, and
that is nowe past for this time seynge it is allredy taken:
and therfore the kynge in that case is driuen too his action.
But quere whether his highnes may bee brought in possessi
on in those cases by a clayme or not: And these cases maye
you seee in ỹ bokes of. 17. E. 3. f, 10. 21. E. 4. f. 1. 5. E. 4. f. 3. et. 4.
E. 3. Like law is it where an office is found which doth not
entitle the kinge to the possession by entrie but onely by ac-
tion, as where it is found that the kinges tenant for terme
of life or yeres hath done waste, or being his tenant in see sim
ple hath ceased by ii. yeres, or made a feffemēt by collusiō con
trarie to the statut of marlebrige, or such like. For it is a ge
neral

Mirr. R. 7. 21 fo. & fro wyche ... 15. H. 7. f. 24. Quare Impedit P. 33
Mirr. 7. 4 Ed.

nèral rule that in al cases wher a comõ person cannot ẽter but is driuen to his action, there the kinge can not haue the possession but by like action, or ells by a Scire facias after office foũd in nature of ẏ actiõ, for the office in ẏ case entitleth the kinge to no other thinge but onlye to the action, as appereth 21. H. 7. f. 13. But quere of a feffmẽt ẏ is foũd to be made by colluſiõ cõtrarie to ẏ ſtatute 34. et 35. H. 8. ca. 8. for in ẏ case it ſemes his highnes may enter wõut Scire facias because the ſaid ſtatute apointes no action to be ſued in ẏ case. And note ẏ in al theſe cases before where ẏ kinge is driuen to his Scire facias or other acciõ if the office be falſe, ẏ partie maye trauerſe the office with ẏ king, keping ſtill his poſſeſſiõ whether it be in ẏ chancerie or in any other court, e nede not to ſue any ouſter le main if it be foũd for him, because he was neuer out of poſſeſſiõ. The further let vs ſee in what cases ẏ king can not be ẽtitled but only by office or other mater of recorde, e in what cases he may, howbeit not to haue anye poſſeſſiõ either in dede or in law vntil ẏ time there be a ſeaſure made. And as to ẏ, note that in all cases where a comõ perſõ can not haue a poſſeſſiõ neither in dede nor in law wõut an entre, there ẏ kinge can not haue it wõut an office or ſuch like mater of recorde, as where ẏ king hath title to enter for a mortmain or for a cõditiõ brokẽ, in this case ẏ king can haue no title vntill ſuch time as ẏ ſayd mortmain or cõdiciõ brokẽ be foũd by office or by ſome other recorde, as it appereth 2. f. 9. H. 7. So it is in diuerſe other cases concerninge ẏ kinges prerogatiue as in ẏ case of Ideotes, of lunatikes which haue lãds or tenemẽts, or when his highnes is to be ẽtitled for annũ, diẽ, et vaſtũ of perſõs attaited, or for an alienaciõ wõut licẽce, or to ſeſe ẏ tẽporalties of a biſhop for a contẽpt, in all thoſe cases his title muſt be furſt foũd by office or otherwiſe apere of recorde for theſe rights his highnes hath only as king. But if his highnes haue cauſe to ſeiſe the lãds of his widow that hath maried her ſelf wõut licenſe his highnes maye ſeiſe, notwithſtandinge there be no office foũde of her mariage, as it appereth in ẏ new Natura breuiũ. f. 174. 265.

21. H. 7. fo. 13.

Seiſe ſans office? 3.

2. H. 7. in Fitz ti. proc. P. 10.

Learne

Learne what shoulde be the reason therof, more then in the case of alienaciō before. Like law hath bene vsed where his highnes is to sese lands of priors aliens within this realme ratione guerre, his highnes doth it without any office, for in bothe these cases the kinges title is notorious enoughe although it appere not of recorde. But yet in those cases his highnes must seise ere he can haue anye interest in the lāds because they bee penal toward the partie and of these cases you shall finde bokes 49.E.3.f.17.21. E.3. fo.31.21. H.7 fo.7.14. H.4.fo.37.22. E.4.fo.43.et 17. E.3.fo.1.et 17. Other prerogatiues the kinge hath which extende onely to personal and transitorie thinges ad bona et catalla felonū, wreke de mere, tresour troue, or the profites of landes of clerkes conuict of felonie, or of persons outlawed in a personall action, to these thinges it semes the kinge is ētitled although there be no office or other mater of record found of them as it should appere. 11.H.4.fo.39.21. H.7. fo.7.et 27.li.all. H.50

Gard.1. 40.All.P.36

And note that if the kinges title appere any way of record, it is as good as if it weare found by office. Therfore yf the kinges tenāt alien wout licence which alienacion appereth by fine or other mater of record, in this case if ther bee an other record found that proueth the landes to be holden of ỹ kinge in capite vppō these.ii.records together proces shalbe made against the partie by Scire facias to come and shewe why he should not make a fine for the alienacion. Like lawe it is where there is a record to proue that he that alieneth is but tenant in taile of the kinges gift, and he pretendinge to be tenant in fee simple doth purchace a licence of alienaciō and a lienethe and after dyethe without issue, which deathe is founde by office but nothinge of his state taile or lycence appeareth in ỹ sayde office, yet vpon all these recordes laied together ỹ king shal haue a Scire facias against the alienee to shewe why the land should not be seised in to his handes

Per anter recorde cyuiell come p̄ office &c. 4

and

and his highneſſe aunſwered of the profites ſince the death of tenaunt in taile, for when hee was but tenaunt in tayle it appearethe that the lycence was pourchaſed vpon falſe ſuggeſtyon, and ſo voyde, and thenne the landes ought to reuerte to the kynge becauſe hys reuercion coulde not bee diſcontinued. And this maye yowe ſee 40.li.aſſ. Then laſte of all it is to bee ſeene whether the poſſeſſion may bee taken from the kynge bye entrye or not. And as to that, yf the kynges poſſeſſion bee by matter of recorde, noe perſone can dyſſeiſe hym or take the poſſeſſion from hym, for lyke as the kynge maye not take by gyfte from anye perſone but by matter of recorde, noe more maye the poſſeſſion departe from hym but by matter of recorde, and therefore his hyghnes cã not haue aſſiſe or Eiectione firme ſiue cuſtodie, lyke as a common perſone maye: yea and thoughe the entrie bee not immedyatlye vppon hym but vppon his committee or fermer, yet it is noe diſſeiſin to his hyghneſſe, as it appearethe 4.H.7.folio.2.M.2.H.4.M.14.E.4.folio.2 & M.35.H.6.folio.1. Lyke the whiche ſayde booke of 35. it alſo appearethe, that if the kynge or hys commyttee bee caſt oute of the wardeſhyppe of the landes that the remedy is in thys manner, that is to ſaye, vppon ſuggeſtion thereof made in the Chauncerye, there ſhalbee awarded a wrytte called Amoueas manum, and that vppon a certaine payne, whyche wrytte maye bee awarded onelye vppon this ſuggeſtion wythoute anye preſentmente or enquirie, and thys wrytte maye bee graunted to the committee as well beefore poſſeſſion hadde of the warde as after, for where the kynge was once poſſeſſed by office, and grauntes it ouer, yet this poſſeſſion ſtyll remaines, for the kynge abydeth ſtil gardeyne notwythſtandynge anye ſuch graunt: And therefore this wrytte of Amoueas ſub pena lyethe for the graun tee or committee, although the graunt be abſque aliquo inde reddendo. And if vppon this wrytte of Amoueas the de-

40.li.aſſiſe. in Fit. ti. Garde P.1.

Entre ſur poſſeſſion le Roy. 5.

35.H.6.in. Fits. titulo. Suggeſtion. P.9.

Fits. 7.a.

fendant do not reſtore the thing, then ſhall goe out againſte him an attachement, vpon which writ the defendant maye appeare and ſhewe his title, which if it be founde agaynſte him he ſhall then make reſtitucion by iugement and paye a fyne and aunſwere the meane iſſues & profites. Thus dothe it appeare that the king cannot be diſſeiſed or eiected if his highneſſe bee once ſeiſed by mater of recorde. Otherwyſe it is before his ſeiſin bee by mater of recorde, for if beefore office a ſtraunger entre by title or without title this is no intruſion vpon the kinges poſſeſſion, but in this caſe the heire may haue Aſſiſe of mortdaunceſter againſte the ſtraunger if hee will, whiche proues that by his entrie hee hath gotte bothe a freeholde and a fee ſimple. But as ſone as the office is founde and the eſchetoure entreth, this poſſeſſion of the ſtraunger whiche entred witheoute title is clerely vndone, and the freeholde and the fee ſimple reueſted in the heyre But if the entrie of the ſtraunger weare by title and after warde office is founde and the kynge ſeiſethe, whether then it bee ſo or noe, learne. And it ſhoulde ſeeme to bee all one, or els the kynges ſeiſure is not good, for howe can the kynge ſeiſe in an other bodyes ryghte if the ryghte weare taken awaye beefore by an entrie: therefore it ſhoulde ſeeme eyther hys highneſſe hathe noe title in that caſe to ſeiſe, or els by his ſeiſure, the freeholde and the fee ſimple muſte reueſt in the heire. But note that if the kynge wyll bye coloure of a recorde ſeyſe an other mannes lande, whiche recorde geeuus him noe title in deede, notwytheſtandynge anye ſuche ſeyſure, yet hee that hathe ryghte maye entre vppon the kynge, and bye his entrie reueſtes agayn in him ſelfe bothe the freeholde and fee ſimple as where it is foūd the kynges tenaunte dyed ſeyſed but of an eſtate for terme of lyfe the reuerſion to an other and thys notwytheſtandynge the kynge ſeiſethe, in this caſe if hee in the reuerſion en-

2 / 22.

M. 14 h. 4. Stath. Lyndys. acc de cc̄ in remēdr. Ant. 12. E. 2

on entre vppon the kynge this is a good entrie: and there- 14h4.33.E.
fore the case was, hee made a feffement after his entrie and it was thonghte to be a good feffemēt. Like law is it where the kynge is entitled but oneiye to the profites as vppon an vtlagarie in a parsonall action or vpon the conuiction of a clerke, in these cases if the partie entre and make a feffemēt or if a straunger that hathe title to entre do entre hee dys- Trauers. 12.
chargeth the kynge of hys interest, and of these matrs, you Assise.156.
shal find bokes 8.H.4.f.16. 21.E.3.f.1.3H.7.10.E.3.27.all.H
15.9.H.6.f.20.f.21.H.7.f.7.

Enterpleder. fa.3.

SOmetyme it happenethe that by two seuerall offices founde in one countie seuerall parsones be seuerallye founde heires to one man, wherebye forasmuche as the kinge is brought in doubt to whiche of them his highnesse maye make liuerie, they therefore muste firste enterpled e, and when by enterpleder the prauitie of the bloode is tried betwcene them, then his highnesse oughte to make the liuerye to him that is tryed to bee the nerte heire of him that dyed. As for an example, by one Diem clausit or speeyall commission in one countie one is founde heire to hym that dyed the kyngs tenant and of full age, and by an other Diem clausit or speciall commissiō in the same countie one other is founde heire also to hym that dyed and within age, in this case the heire that was firste founde shal haue a Scire facias in ỹ chauncerie against hym or her ỹ was last found heire to come & shew why liuerie should not be made vnto

hym that last dyed seised thereof vppon whiche writte yf a Scire feci be returned and the partye defendaunt cometh not, or yf he come and confesse that he hymselfe is not heire then the plaintife in the Scire facias shal haue hys lyuerie, but if hee come and entitle hym by the seconde office, and trauerse the firste as hee nedes muste (for thenterpleder muste nedes reste vppon the firste office, and not vpon the seconde) then as thissue is founde, so shall hee or theye for whome it is founde, haue lyuerye. And this appearethe in the newe Natura breuium fo. 294. 36. E. 3. & 16. E. 4. folio. 4.

zbb. 6. C.

P. 36. E. 3. in Fits. titulo. Trauers P. 44.

fitzh. 260. a.

Howbeit a great doubt ryseth in our bookes vppon thys mater whether thenterpleder shalbe fourthwithe after the seconde office founde or not vntill suche time as the heyre that is founde wythin age commethe to his age, and as it appeareth by the sayde boke of 36. Ed. 3. in this case, where one was first found of full age & after the other within age thenterpleader was fourthwithe, for it weare noe reason that hee that was ryghte heire and of full age shoulde bee delayed by the nonage of the other that is noe heire. And a straunger shalbee receaued to trauerse the office not withstandinge, the heire that is founde by the office that is trauersed bee within age. And then it is noe reason that the heire in this case be in worse condicion then a straũger. But take it, by the first office one is found heire and wythin age. and by the seconde office an other is found heire, and of full age, whether in this case they shal enterplede or not, or whether thenterpleader shalbe before thage of the other: And surely it shoulde seeme by the groundes and rules declared before vpon the writ of Diem clausit extremum, that the seconde office in this last case is voide, because there ys noe better title founde for the king than was by the first, & then if it be voide, there can be no enterpleder. Howbeyt in the newe Natura breuium fo. 2[illegible]. it appeareth to the contrarie

A tout temps Lenterpleder sera

Antea. 52. B C

trary hereof ꝙ that they shal enterplede in this case, and ꝙ the seconde office is not boyde for there the heyres founde by bothe offices weare of full age. And yet that not wythstan dynge theye enterpleaded. And so is.5. Edwarde the fower- the where it is sayde that if by one office the heire is founde within age, and by an other office an other is founde heire and of ful age, that in this case theye shall enterpleade but not before the childe come to his full age. And Townesende iustice sayeth in.x.H.7.that if by diuerse offices y.be seueral ly founde heires and within age, nowe the kynge shall kepe the landes tyll theire full age, and thenne theye shall enterpleade, and yf theye dye before enterpleder their heires within age, seueral Deuenerunt shalbe awarded ꝙ is to say, for euerie heire ones by the same beyng foũd seuerally heyres to the aunceſter, theye shall enterpleade at theyre full age, like as the aunceſter shoulde haue doone if they hadde lyued, and yf the dyinge of anye of them weare wytheout issue and the other founde to bee his heire then is thenterpleder determined. Thus may ye see how bokes vary in this matter, and yet by the waye note this difference, that is to saye, where by the firste office the heire is founde within age and were of full age, for by these bokes it shoulde seeme that if hee bee firste founde withein age, not withstandyng that by an other office an other is found heire and of full age, yet hee shall not enterplede with the other tyll he bee of age, contrarie it is yf the fyrst be found of full age, and the nexte wythin age, and the reason may be for that the kynge is first seysed of hym ꝙ is wythyn age, wᵗ whom the lawe weyes more in presumption to bee heire than the other, and thys tytle ys the beste tytle that the kynge hathe, for it entytlethe hys higheneſſe to a greater benefite than dothe the seconde office, and thys second was found vpon a cõmission graunted more for the kings benefit thã for ꝙ heries that should be foũd by ꝙ same

T.5.E.4.f.14.a. Fitz. Off. B C D

fo.14.B

Liuery.P.17

bigstye.

and therefore if ꝑ weare reason that hee that is first founde heire haue more fauoure if anye fauoure bee to bee shewed thanne hee that was last founde heire, or at the least for the kynges benefit that the matter be respited til the childe bee of age. Also the sayde Justice Townesend sayde further, that if one bee founde heire in one countie & an other founde heire in an other countie, yet they shall enterplede, whyche can not bee as me seemethe: for once wee haue a generall grounde that a man can not sue a generall lyuerie by parcelles but firste he muste cause an office to be founde in euerye shere where he haue landes, and when all the offices be returned, then to haue his lyuerie and not beefore, then this case where one is founde heire in one sheere and an other in an other sheere, heare none of them bothe canne haue lyuerye, beecause hee hathe noe office founde butte in one sheere and not in the other: and thenne if there canne be noe liuerie there can be noe enterpleder, wherfore it should seme in ỹ case they cā not ēterplede. And here with agreeth the boke in. 2. E. 8. Henry the seuenth. So no enterpleder can bee but where there is an office thorough the whole found for euerye heire in euerye countie wheare the landes lye, but it is not allwaye requisite that theare bee seuerall offices founde, for sometimes vppon one office founde by it self alone there maye bee an enterpleder, and that is wheare ỹ. bee founde heires by one enquest as two twynnes that is to say, two children borne at a burden. And it is to be noted that euerye enterpleder is to trye the prauitie of bloude onely, that is to say, which of these ỹ enterplede is next heyre to hym that last dyed seysed, and not to trye theire rightes in the landes. And therfore if by one office one bee fōd heire of a general taile, and by an other office an other is founde heire to the same lande as of estate in specyall taile, theye shall not enterpleade, as it appearethe in 21. H. 7. fo 38. Also they must be both found heires to him that last dyed, and by whose

Nepte cē sur seuall. officz en seuerall Comties.

post. 77h. 79. E

Ant. 51. C.

2. H. 7. f. 2. Trauers 49.

Enterpleder sur vn office solem

Sur priuytie de sangne solem

1624. 4. B

whose death the king dyd seise: for if one bee founde heize to hym that dyed seised and another is founde heire to the auncester that dyed seised nexte before the last dyinge seised, in this case they shall not enterplede, as it appearethe in Y.2. Y.6.f.5. Also theye shall not enterplede but wher both heirs claime by one selfe title of landes holden of the kinge, for yf the kings tenant dye seised of lands holden of other as well as of the kynge, and one is founde heire to al the landes, and by an other office an other is founde heire onely to the landes holden of other, in this case theye shall not enterpleade, as it appeareth in. 12. E. 4. f. 18. for he ý is found heire by the seconde office can not haue liuerie if thenterpleader weare found for him, because he is not found heire of all as is before remembred. And therefore if one be founde heyre virtute breuis. and an other is founde heire virtute officij, in this case they shall not enterpleade, beecause hee that is founde heire virtute officij, can not haue liuerie yf thenterpleader did passe vñ him: for ý nature of enterpleder is to haue [illegible] for him with whom it is founde. And note that notwithstandyng an enterpleder is not to trie the righte in the land but onelye the prauitie of blood: yet the issue tryed betweene them shalbee an estoppel afterwarde in an action vsed of the possession of the same auncester by whom theye claime, as in Assise of mortdauncester or cosinage, as it appeareth in. 4. Edwarde the seconde. And note that as two or more shall enterplede that clayme as heires, euen so shall anye other that clayme not as heires, but by soome other tytle, if it bee so that theire title affirme the kinges possession, as take the case to bee this. Land holden in chiefe is alyened to diuerse persons at diuerse tymes, and thys founde bye office the kyng seiseth, & after cometh euery of ý alienees & praieth to make his fine & to be restored, now they shal first ēterplede & try which of their feffements ought to take place ere any of thē getteth restitucio, as appereth in 43. li. ass.

Ne laist forsq̃ on le Roy port fayre Lymexye.

liuerye

Estoppell P 255.

enterpleder enter es Brangs

Trauers 25. p. 20.

So it is if anye of them come into the chauncery wytheout proces & confesse thalienacion, as it appeareth by the layde bokes, for by the confessiō the king is entitled against him that confesseth as well as if it had beene founde by office.

Trauers. Ca. 4

TRauerse for goods was at ỹ cōmō law, but trauers for lands found by inquisition before the escheto; is geuē by ỹ statut made in ỹ 34. yere of E. 3. ca. 14. which saieth in this wise. Item acē est q̄ la ou terres ou teñts sōt seisies en la maine le roy p̄ office del eschetor cōteignōt q̄ le tenāt le roy ent fist alienaciō sās cōge le roy, ouq̄ le tenāt le roy p̄ seruice de chl'r morust sīsi des terres & teñts auātdits en sō demene cōe de fee et sō heire deins age, et puis la cause certifie en la chaūcerie, et celuy qui terres sōt seisie veigne en lachācerie et voet trauerser loffice qui fuit primes pris p̄ mādemt le roy, que les dites terres ne soyent my seisables, soit a ceo resceu & soit le proces maūdes en bank le roy a tryer et oustre faire droit. This statut extēds only to the offices takē virtute breuis aut cōmissionis, & not to offices taken virtute officij. And also by this statut though ỹ trauerse were founde for ỹ partie, yet might he not haue had iudgemēt til a procedēdo ad iudiciū had ben awarded. And therfore was there an other statut made in the 36. yere of ỹ said king the. 13. cha. the tenor whereof is this, Pour les greuouses complaintes queux le roy aū oye de son people de ses eschetoures, & de lour male port, il voet & ordeigne del assent auauntdit, que terres seisies en sa maine par cause de garde, soyent saluement gardes sauns wast ou destruction. Et que leschetoure neyt nulle fee de bois, veneson ne pessoun, nauter riens, mes respoignā au roy des issues et profits annuels proueignaunts

des

Der gl ler trauers est done?

des dits terres sans wast, ou destruccio faire. Et sil face autrement et de ceo soit attaint, soit reint a la volunte le roy, et rende al heire ses damages au treble, a sa proper suit, sibien deins age come de pleine age, & eyent ses amis tanq; il soyt deyns age la suite pur luy, respoignants al dit heire de ceo qui serra issint recouere. Et auxint dauters seisies en la main le roy par enquest doffice pris deuaunt leschetor teign mesm cest ordinaunce & penance deuers leschetours. Et sil eyt nul hoe qui metre challenge ou claime as terres issint seisies, qui Leschetour maunde lenquest en la chancellary deins le mois apres les terres issint seisies. Et que briefe luy soyte liuere de certifier la cause de sa seisine en la Chauncellarye, & illeoques soyt oye saus delaye de trauerser loffice ou auterment monstrer son droite & illeoques maunde deuaunt le roy affaire finall discussion sauns attender auter maundement. Et en cas que ascun veigne deuaunt le chaunceller & monstre son droyte per quel demonstraunce per bones euidences de son aunciен droyte et bone tytle que le chaunceller per sa bone discretion & aduis du counsayle sil semble que il besoygne auoire coūsayle, que il lesse et baylle les terres issint en debate al tenaunte rendaunt ent au roye le value si au roy appertient en maner come il et les auters chauncellers deuaunt luy oūt faits auant ces heurs des lours bons discretions issint que il face suerte que il ne ferra wast ne destruccion, tanq; il soyt aiudge. Et que les dits eschetours preignēt tielx enquests en les bons vill' & per bons gents, & de ceo ouertment, & par endentures affaires enter les dits eschetours et ceux des enquests come auter foits estoit ordeign per estatuts. Anno. 24. E. 3. Et si nul eschetor face au cōtrary de cest ordinace suisdit eit la prison des. ii. ans, & ouster ceo soit reint a la volūte le roy.

By the comen lawe beefore the making of these statutes a man had no other remedy to auoid a false office but onelye his petition. Notwbeit in 24. E. 3. wylby saieth that if thoffice had bene found before cōmissioners or any other thanne theschetor, the party should haue had his trauerse by thorder of the cōmon law. Parauenture he may be moued so to say bee- 24. E. 3. f. 4.

because those statuts geue a trauerse onely to offices & before escheators, making no mẽtion of any offices & before any cõmissioners. Also before these statutes if after liuerie or Ouster le maine sued, there had beene a newe office found, whereby the king had ben entiled to reseise, & thereuppon a Scire facias according to the statut of Lincoln against the partie that had pursued the liuerie or Ouster le maine to come & shew why the land should not be reseised, the partie in that Scire facias might haue trauersed the office that was so newly founde, as I shal more plainly declare when I come to that place. Also Bab. sayd in the eschequer chamber before al the Iustices An. 8. H. 5. that these statutes that geeue trauerse are only to be understand where ỳ king is entitled to ỳ land but for a time, as for warde ship, alienaciõ wont licẽs and suche like. But if his highnes bee entitled to ỳ fee simple or the freehold, there he ỳ is put out by the office shal not haue his trauerse, but is put to his peticion Tamen quere, for though the first statut be this as Bab. hath sayd, yet the second is not, but is general, & therfore may bee extended to al offices what mater soeuer they contryn, as appereth H. 19 R. 2. wher it was foũd ỳ one had encroched vpon the kyngs demeines which office in dede was false for that ỳ the thing supposed to be encroched was parcel of his manor that was so preseted & no part of the kings demesnes: in this case ỳ partie being put out of that parcel of grounde by the escheator was receiued to trauerse the office, & yet thoffice entitled the king to the fee simple. Also those statutes seeme not to geue trauerse but to him that is put out of possession by the office. But the statut of. 8. H. 6. ca. 16. alowethe any trauerse pfred by him that feeleth himselfe greued by any such enquest although he be not put out of possession by the escheator. And ỳ statut semes also to allow trauers of an office taken aswell before cõmissioners as before the escheator. Nowbeit ỳ statut geueth no trauers but onely maketh therof a rehersal.

post. 64. 2. 82. c.

Trauers 47.

Le roy est entytle al franke.

Traners 37.

So. as. p. 2.

Quel person ant a trauers.

These

These statuts that geue the trauerse seme to offre it generally to any man that wil desire it or that doth put challenge or claime to the lands wherof he is put out by any office. Howbeit ỹ erpositiõ hath ben otherwise that is to say, that his challenge or claime must be such as the law will admyt & allow, for euery man can not trauerse that would or that maketh his challenge or claime: for these statutes are intended wher the king is entitled by office oncly, for if his highnes be entitled by an other record beside the office and entitled as it were by a double mater of record, the partye shal neuer haue his trauerse. As take the case to be this. a man is attainted of treson by act of parlement or otherwise by verdit, and afterwarde it is found by office that the said person attainted was seised day of the treason cõmitted of certaine lands which in dede were neuer his lãds but mine, in thys case if I be put out of my lãd by this office I can not trauers it Causa qua supra, and yet I am a straunger to this record, as appereth in 46. E.3. 10. H.6. & 4. E. 4. But if therbe noe such record of attainder I shalbe receiued well ynough to trauers the office, alleginge first to enure mee to a trauerse that there is no such record of attainder as appeareth in. 4. H.7. Also he that is founde heire by office shal not trauerse the same office that so findeth hym heire yf that part of thoffice that concernes the tenure in chiefe bee true, although the reste of the office bee false: and therefore if the kynges tenaunt dye seised his heire being of full age, & by a false office the heire is founde within age, in this case, hee can not trauerse thys office as appearethe T.5. E.4. And the reason of it is because the heire can not falsifie thoffice that hee himselfe is to affyrme by his liuerie whenne hee shall sue it. For though hee woulde cause an other office to bee found according to the trouthe of the mater, yet it were not to the purpose to help him, for ỹ best office shalbe take euermore for ỹ king, that is to say, that that geues his highnesse most

Traus ne gist sur double matter de record.

46. E.3. f.17.
10. H.6. f.15.
4. E.4. f.27.

Lei gest traue Reyne p mle office

4. H.7. f.6.

5. E.4. f.43 b.
et. 5.

most auantage & the heire driuen to sue his liuerie vpō that office onely, for seing the king is bound by an office as wel as is the heire, it is reason if any be better for him thā other that he be bound to that onelie, & not to the other, & the lawe presumes the one office to be as true as the other vntil such time a tryall thereof be made, which triall cannot be by the heire, for hee is bounden as I sayde beefore by the office that is found, without any further choise, hauing no prerogatiue in such mater, and if he shoulde be receaued to his trauerse in this case, then vpon the trauerse founde for him he should haue the lands out of the kings hands by an Ouster le mayn without any liuerie suing, as lands that the king ought to haue seised, which were incōueniēt. For euery way ỳ king ought to haue seised those lands against any ỳ claimeth to be heire vntil such time as liuere be sued therof. Like law it is where the kings tenant dieth seised of land in diuers coū ties his heire being of full age, & in one coūtie the same heire is founden wīn age, & in an other countie he is foundē of ful age, in this case the heire shal not trauerse thoffice that foūd him within age Causa qua supra: for then for the landes in one coūtie he should haue thē out of the kings hands woute any office or liuery suing. And this case appereth in. 32. H. 6. But if an office find ỳ my father held his lands of the king in chiefe by knights seruice wherin dede he held not of him in chief, in this case I shalbe reteined to trauerse this office. For if I should sue my liuerie vpon the same I should be cōcluded euermore after to say, but ỳ the lands were holdē in chief of the king, & for ỳ cause I shalbe receaued to my trauerse as euery straūger shalbee in the like case: for if my trauerse be true thē cā ỳ king haue no cause to seise those lāds, & therfore not like the cases beefore remēbred, as appereth H. 7. H. 7. The wordes of these statuts be ỳ he whose lāds be seised shal trauerse or he ỳ putteth challeng or claime to ỳ lād so seised. These wordes be not so geñaly vnderstād as they be spoken, for

Trauers. 39.

44 as. f. 35.

Liuery. P, 10

not

for most men vnderstande them that hee that will challenge or claime but a terme of yeares onely shal not bee receiued to his trauerse where the kinge is entitled to the freeholde by thoffice, as wher it is founde that the kings tenant is seised of certane landes and is dead without heire wherby the lãdes ought to escheate to the kynge, cometh one and sayethe that hee is tenaunt for terme of yeares of these lands of the demise of a straunger, without that that he that is supposed to bee the kinges tenaunt was euer seysed of these landes, this trauerse lyeth not in his mouth: for he that hath but a chatell shall not be receiued in anye case to falsifie the recorde that geueth any man interest in the freehold although he be a straunger to that recorde. Contrarie lawe is it of him that hathe a freeholde or inheritaunce in the lande, for they shall trauerse the recorde in suche case. Lyke lawe is it where the kynge is entitled but to the wardeshyppe of the heire of his tenaũt hee that is fermer of the dimse of a straũger shal not trauerse hys office althoughe the king be not entitled thereby to anye freeholde, for it was not the minde of the makers of these statutes to helpe them that clayme: but chatels which are accompted in law as nothing, because they perishe and abide not. Et de minimis non curat lex. Howbeit learne what the law wil in these cases, for I haue seene noe bookes of them. The lorde in title of wardshyppe shal trauerse the office, and yet hee claymethe but a terme of yeares in the lande, as where it is founde by office that such a one helde lands of the king in chiefe and dyed his heire within age where in deede he holdeth no suche lande of the kynge but onelye of mee by knightes seruice, in this case, I that am lorde shall trauerse this office, that is to saye, shewe howe theye bee holden of mee by knightes seruyce without that they be holden of the king, as appereth in 1. H. 7. For ther it toucheth the lords inheritance in the righte of hys

Trauers. 20,

Termor nanra trauers.

37 ass. p. 11. see contra de tyes statute mes that wilton

Garden en chiefe anna trauers.

his seignory, & because he by ỹ false office is to lose ỹ profit ỹ is presently fallen by reason of his seignorie, it is reason he be receaued to trauerse the office. But if hee were but lorde in socage he shoulde not be receiued to his trauerse, because he therby can make no title to the wardshippe of the body, and landes of the childe, for it is a good generall grounde if the kynge be once seised, his highnes shall reteine against all other that haue noe title, notwithstandinge it be found also that the kynge had no title but that the other had possession before him, as appeareth in. 37. lib ass. where it was found that neither the kinge nor the partie had title, and yet adiudged that the kynge shoulde reteine, for thoffice that fyndes the kyng to haue a right or title to entre, makes euer the king a good title although it bee false, and his highnes therby maye take possession against any other that is seised of the landes, and reteyne vntill such time as thoffice be trauersed by him that hath title and tried to bee a false offyce. And therfore no man shal trauerse thoffice vnlesse he make him selfe a title. And if hee can not proue his title to be true although he be able to proue his trauerse to bee true, yet this trauerse wil not serue him. As for an exãple, it is foũd the kyngs tenaunt died seised of certayn lands that he held of the kynge in chiefe, his heire beeinge within age, where in dede he had made a feffement in his life time to an other of those landes, it is no trauerse for the feffee to say he dyed not seised, but he must first make him selfe a title by the feffement: and for asmuch as it is founde that the landes are holden in chiefe, if he wyl make his title good against ỹ kyng he must shewe fourth a lycence of alienation or a dispensation therof, or els hee muste trauerse the tenure in chiefe as well as he shall doe the rest of thoffice, otherwise his tytle is not good, as it appearethe in. 36. E. 3. 3. H. 4. 6. H. 5. f. 3. H7. f. 14. Howbeit Hussey holdeth opiniõ that not mã may trauerse

Garden en socage nanratur h. 6 h 7. 15. f. 37. lib. ass, p 35.

trails ne vont sans title

post. 65. gh

Trauers P. 44. et. 46. Liuerie p. 18

p. 11.

t. h7. 28. b

ca.4.
Le pt trauser le temps &
le estrange ama trauls.

trauerſe the tenure but the lord or the heire vnleſſe his title be found by office, but whether the lawe be ſo or not learn, for as I take it the lorde and euery ſtraunger ẏ hath a tytle againſte the kynge, makinge his title ſhall trauerſe the office before his title be found by office: for when the trauerſe is found for the partie his title nowe appeareth of recorde, and by the trauerſe found, the office which was the kings title is vtterly deſtroyed & gone, ſo that now the king is not to make any liuerie of the lands to any perſon but onely to remoue his hands from the ſame, with the meane iſſues and profites as one ẏ had no cauſe to ſeiſe them. And therefore euery man may enter now that will if he haue right or title of entrie to the lands, for the king deliuereth them to no perſon certaine but onely ryddes his own hands of them as he that had neuer ſeiſed thē, but otherwiſe it is where the king is to make liuerie, for there his highnes muſt bee enformed certainly by mater of recorde who ſhalbe his tenāt & whoe it is that ought to receiue the liuerie at his handes leaſt his highnes be deceiued in thadmitting of his tenant which ys & ought to be a great mater towarde the lord, & therfore the caſes be not lyke, wherfore I think a man may trauerſe by force of theſe ſtatutes without hauing their title firſt found by office: & ſo be our bokes. 36, H. 3. 2. E. 4. f. 10. 16. E. 4. f. 4. & 43. li. all. H. 20. Notwithſtanding 5. E. 4. fo. 5. ſeemes to ſwerue to the cōtrarie hereof, & 12. H. 6. alſo, where it is ſayde that if it bee found that the kings tenāt died ſeiſed wher in dede he was ioyntly enfeffed wō me, now can I not trauerſe this office except an other office were founde for me. But contrarie lawe ſhould it be if it had ben foūd by ẏ office iointenant wō hym for term of life wher in dede I was iointenaunt with him in fee ſimple, in this caſe I may traūſe thoffice, becauſe mētiō is made of me in ẏ ſayd office, this boke caſe admitted to be law, yet it varieth frō ẏ caſe before remēbred of ẏ ſtrāger

Fortesc. 66. c
F. N. B. 4. a/
30 ass. p. 28.
40 ass. p. 24.

Trauers. 44.

that

that trauerſed thoffice, for here thoffice is true, and when it is found by office that he died ſeiſed, this maye be allthough the ſayde dying ſeiſed were iointlye with an other for any thynge that is erpreſſelye founde to the certaintie, and then the king here is to admit an other tenant, as in the caſe of ỹ liuerie before of whome as yet he hath no credible informacion, that is to ſaye, by mater of recorde, and then it is lyke to the caſes of tenant by the curteſie, tenant in dower, and the deuiſee which in no wiſe can be admitted to their eſtats vnleſſe mention be made of them in the office or ſome other office or mater of recorde found for their, as appeareth in 46. E. 3. & M. H. 8. and for none other reaſō as I gather it but onely for that thoffice is trus, & they are to be admytted the kings tenants which can not be but by informacion by mater of recorde, vt ſupra. Then let vs reſorte to the place we were at before: that is to ſay, no man may trauerſe with the king vnleſſe he make himſelfe a good perfecte title, as to ſay that the tenaunt whiche is ſuppoſed to dye ſeiſed did enfeffe hym, or that a ſtraunger was ſeiſed and did enfeff him without that that hee dyed ſeiſed. And ſo note by the waye that he may conuey hys title aſwel frō a ſtraunger as from hym that is ſuppoſed to dye the kynges tenaunt, as appearethe in. 36. Ed. the thirde, and when he hath made thus his title, then he muſt trauerſe the kings title which is thoffice, for it is not ynoughe for him to reſt vppon his owne title al thoughe it be neuer ſo ſtrong without aunſwerynge the kinges title, yea although it were good againſte a comon perſō, yet againſt the king it is not ſo wout trauerſing ỹ office. And therfore if he wil ſay ỹ the tenāt in his life time did leuie a fyne vnto him of theſe lands, Sur conuſaunce de droit come ceo quil ad de ſon done, by vertue wherof he was ſeiſed vntil ſuch time as he was put out by this office & praieth reſtitutiō, this is no ple againſt ỹ king, & yet this mater were a good plee in aſſiſe of Wortdaſiceſter brought by ỹ heire, for

contrarye

antea. 17. ff.

9. H. 7. fo, 24
Brief. 618.

Title p̄ mentenyer traus.

Trauers 44.

Title le roy doit eō traus.

for in that case he shoulde be stopped by this fine, whiche is executed to say the contrarie therof, that is to say, that his father dyed seised without shewing howe his father gotte the possession againe sins the time of the fine leuied. But yt ys no plee against the kinge, for the kinge can not bee stopped namely in this case beeinge a straunger to the recorde. And also the statut geues a trauerse and by this maner of pleadynge he taketh no trauerse. Lyke law it is if it be founde by office that the kyngs tenaunt in chiefe enfeffed one B. without lycence, comes one D. and sayeth that he dyed seysed, and his heire entred and enfeffed him by the kynges lycence, this is noe plee without trauersing the feffemēt made to B. and yet against any comon persone it were a good plee but not against the king, for his title must bee answered fully: and that is the feffemēt, & these cases appeare 46. E. 3. 43. li. all. Pa. 25. Also it is not sufficiēt to trauerse one of ỹ kynges titles but he must trauerse them all, for though the kings title that he is seised by, be found not good, yet if ther be any other record that makes the kinge a title wherby he may retayne the landes, the partye must auoide also that title or els he gettes no Ouster le mayne, but learne if ther be no suche record in Esse or beinge at the time of the trauerse tended, & hanging ỹ plee vpon the trauerse a new record ỹ is to say, an office is found which entitleth the kyng, whether in this case ỹ ptie shalbe driuē to trauerse this office or not: ere he haue his Ouster le maine. And it semeth he shal not: for so he might be delayd of hys possession infinitlye by finding one office after an other, wherfore this office found hangyng the trauerse shallbe accompted in law as though it had bene founde after the partye had hadde his Ouster le maine, in which case then the partye vpon the first trauers founde for hym shalbe restored to his possession by an Ouster le maine, and then after vpō a Scire facias sued against

p. 46. E. 3. in Fits. titulo Trauers. P. 17.

gh 4. 7. abc

him to shewe why these landes shoulde not bee reseised, vpon this newe office found for the king, he shalbe receiued in that Scire facias to trauerse this newe office. Howbeit this auantage he winnes hereby, that is to say he then trauerseth with the king keping still his possession, where else he should trauerse being still out of possession. And this case ye may finde. 11. et 19. H. 4. Thus may ye see when a mā trauerseth with the king, he must trauerse all the kings tytles that haue then their being by matter of recorde, and is not bounden any further to answer for that tyme. Then let vs see howe the kinge shall replye vntoo this trauerse: and in that it is to bee noted that the kinge hath a prerogatiue that a common person hathe not, for his highnes maye chose whether hee will maintaine thoffice or trauerse the tytle of the partie, and so takes trauerse vppon trauerse, or when all his tytles bee trauersed his highnes maye choose to mainteine them all or else but one of them. But then note that if hee mainteine but one, that is to saie, take issue but vppon one whiche is founde with him that tended the trauerse, in this case the partie shall haue his ouster le main notwithstanding there bee no issues taken vppon the other titles, but whether the kinge shall euer take auauntage of thother titles after or not this is to be sene: and I thinke hee shoulde, for though the other titles shall not in this case let the partie of his Ouster le mayne, yet it seemes the kinge maye call the partie againe by a Scire facias to aunswere his other titles, or else his highnes to reseise as I saide beefore, for no nient dedire ten prejudice the kinge nec tanta remuneratio, like as it may doe a comen person. And therfore seeinge hee did not renounce his other titles openlye nor expressely, it seemeth his highnes by his prerogatiue shall haue aduauntage of them at anye other tyme when it shalbee his pleasure. And these cases ye maye see. 13. Ed. 4. fo. 8, 9. Hen. 4. et 4. H. 7. f. 4. Howbeit it appeareth in the saids

Antea. 66. E. post. 82. C. D.

T 11 H 4. 86.

No. 6. f

Come le Roy replieera al traus.

Tr

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Trauers. 15

saide booke of.13.E.4.that after the kinge ioineth an yssue vppon a trauerse, his highnes cannot in an other tearme wayue this issue and take a newe, for so the partie might bee delaied infinitely of his right, whiche shoulde bee as it were a wronge committed vnto the partie, and the kynge by his prerogatine maye doe no manne wronge: but after issue ioyned hee maye demurre in lawe, and waiue thissue for there is noe matter chaunged but the olde remaineth. And by the demurrer the lawe presumeth that thissue was misioined and so myght bee a iesaile, and therefore his highnes maye demurre in lawe after issue, but not change his issue and take a newe. And note that if the partie take a trauers whiche is iudged insufficient in the lawe, thys is peremptorie vnto him, & he shall not bee received after to take a newe, as it appeareth 40.lib.Ass. Howbeit.14.E 4.fo.1.the contrarie oppinion is holden, and that it is not peremptorie, because it procedeth in the Chauncerie which is the court of conscience. But as to that a manne maye answere and saie that a Chauncellor hathe two powers, the one absolute the other ordinarie, and this trauerse is before him by an ordinarie power, in whiche case all thinges touchinge the same must proceede as it shoulde before anye other ordinarie iudge of the common lawe, and therefore it shoulde appeare by a booke in.4.H.6.fo.12.et 22.Edward 4.fo.9.that if the partie be nonsuit in this trauerse it is peremptorie vnto him, for so might hee delaie the kinge infinitely, tamen quere, and learne whether one maye procede with a trauerse the heire beeinge within age or else shall tarrye till hee bee of full age for the booke is in 5. Edwarde 4.that hee shall tarrie till the heire cometh to age. But in this question one may make this distinction, that is to saye Whether ỹ trauers be tẽded by a strãger or by ỹ heir, for sõtymes it happeneth, ỹ ỹ heyr shal traũs as wel as a strãger.

Judgt on nonsute en trauls peremptorie &c.

Trauers. 24.

Trauers, 12.

trauls disen ge mesme le monage le heyre : et trauls pmt le heyre m &c

T.5.E.4.f.4.a m Dyuersitys

For no more then a straunger can haue ouster le maine wout trauersinge all the kinges titles, no more may the heir haue liuerie wythout trauersinge all his tytles, and then if the trauerse bee to bee taken by the heire, hee shal not be thereunto admytted vntill hee bee of age, because that beefore that time he hath no cause to haue his liuerie. But that reason serues not where the trauerse is to bee taken by a straunger, and therefore it should seeme that hee shoulde haue it by and by: For hee hathe cause to haue an ouster le maine forthwith, and that with the meane issues and profites, and therefore it were no reason that the nonage of a thirde person shoulde hinder him with whome hee is not to plede or to trye anye right but onelye with the kynge. For if the childe haue right, hee may enter vpon the stranger after hee hath his ouster le maine and trye hys righte with him: and so at no mischiefe. And note as I saide beefore that the heire must trauerse all the kinges titles ere hee can haue liuerie, and that whether the kinges tytle be in his owne right or in the right of an other, in his owne right, as if there bee a recorde that proues this lande to be alienes wythout the kings lycence, or that thaunceStour of thenfaunt that woulde sue his liuerie was but tenaunt for terme of lyfe, the reuercion to the kynge and hathe made a feffement to the kinges disheritance or suche lyke, in these cases notwithstandinge the kinge did not seise by vertue of these recordes but onelye by vertue of thoffice whyche founde thaunceStour of thinfaunt tyed seised the kynges tenaunt in chiefe of estate in fee simple, yet the heire geatteth no generall liuerie vppon that office vntill suche time as hee hath auoided these other recordes And if hee haue it beefore: it is a cause of reseiser. So it is where the kynges title is in righte of anye other, as if one bee founde heire by office, and after by another office an other is founde heire

Ante. 62. h

of

of the same landes to the selfe same auncestour, in this case he that was first found heire cannot haue his generall liuerie vntill suche time as hee hathe destroied the other title either by an enterpleder or a trauerse, for if it so come to passe that he cannot enterplede, then must hee trauerse or by some other meanes auoide the recorde ere hee can haue his saide generall liueries, and if he sue his generall liuerie otherwise, it is then misused, and a good cause geeuen to the king to reseise. And this enterpleder or trauerse betwene them that claime as heirs is by the order of the common lawe and not by statute, and can neuer be, but where both theire titles bee founde first by office, and the reason is, because that as sone as the matter is discussed betweene them, hee for whome it is founde shall forthwith haue hys general liuerie, which he can neuer haue if his title bee not first founde by office: and therefore not like the case where a straunger trauerseth with the kinge that is to haue but an ouster le maine, for there the kinge hadde no right too seise, and therefore his tytle nede not to bee found by office as I haue saide before. But in the other case who so euer shall claime the lande as heire, his highnes hath right to seise in the right of the saide heire, and to haue his primer seisine or wardshippe as the case dothe require. And therefore his title must bee first founde by office: but where one heire is to trauerse with an other heire duringe the kinges possession, this shall not bee vntill hee that is first founde heire by thoffice come of age, because vntil that tyme, the landes ought to remaine in the kinges handes and then hee to haue liuerie: but whether hee that was firste founde heire shoulde tarrye for thage of him that was laste founde heire I haue said my mynde therin before in ỹ tytle of Enterpleder. But where a straunger is to trauerse, hee shall

ant. 53. abc / post. 83. B

Antea. 57. fgh. 58. aBC

not tarrye for thage of the heire for the causes before remē-
bred. And so there appeareth to bee a great difference bee-
twene a traverse taken by him that is a straunger, and by
him that is heire. But at this daye moste liueries that bee
sued are specyall liueries, whiche conteine in them selues
a pardone, and therefore the mysusinge of them is dispen-
sed withall by the woordes of the pardone conteined in the
saide liuerie. And so manye of these thinges that I haue
spoken of before are not much to bee obserued if the liuerie
or Ouster le maine bee not generall. For I see no lett but
that an ouster le maine maye be graunted specially as well
as a liuerie. And laste of all it is to bee noted that this tra-
verse extendes not to euerie recorde that entitleth the king,
but onelye to suche recordes as bee trauersable, as an office
or suche like, as I shall shewe my mynde therein more ful-
lye in the chapter of Petition. Other trauerses there bee
whiche bee trauerses by order of the common lawe. And
not by any statute, as trauerses vppon enditements or pre-
sentmentes, whereof I entend not to entreat in this place,
amonge whiche trauerses there is also by order of the com-
mon lawe a trauerse concerninge goodes and cattalles of
persons attainted, for the whiche a manne shall trauerse
with the kinge although his title thereunto bee by double
matter of recorde. As take the case to bee, a manne is attain
ted of treason or felonye or outlawed in a personel accion
and after by office it is founde that hee was possessed of a
horse or anye other gooddes as his owne proper cattell
where in deede they bee the goodes of a straunger, in thys
case the saide straunger shall trauerse this office with the
kinge. So is it if it bee founde by office that a manne out-
lawed in a personall action is seised of certeine lāds which
in deede are my landes, and the escheatour by force of that fals
office takes the profites, in this case I maye disturbe hym
without

Speciall liuery simplye pardon

Trauerse by the Comen Lawe

without trauersinge thoffice. And those cases appeare. 4. Edwarde. 4. fo. 24. 13. Edward. 4. fo. 8. T. 9. H. 6. fo. 20. & H. 47. E. 3. fo. 26. Then further. The woordes of the saide statutes of anno 36. bee, that if anye came before the Chancellor and shewe his right, whereby it may appere by good euidence that hee hathe an auncient righte and good tytle, then the chaunceller shall let the saide landes to the partye that tendeth the trauerse yeldinge to the kinge the value if it bee audged for the king in maner as hee and the other Chauncellor haue done before him by theire good discretions, so that hee to whome it shalbee letten finde suretie to doe no waste or destruccion berfore the trauers bee discussed. By the woordes of this statute it shoulde appeare that the Chauncellours before this time by theire discrecions hadde vsed to let the landes to the partie to ferme, and that is true, for the kinge vsed so to doe vppon a petition whiche was made to his highnes by the order of the common law in steede of a trauerse nowe vsed, as appeareth 5. Edward. 3. and therefore I thinke his highnes may do so at this day bothe vpon a petition and a Monstrance de droit, although the statute make no mencion thereof, for so it was vsed to doe by order of the common lawes, as it appeareth by the booke before. And of this matter see the booke. 3. Henrye. 7.

some terre sera liese al ferme sur trauers.

Quare impedit p. 34.

Trauers, 12.

Now is this statut amplified and made plainer in thys point by the statute made in the. 8. yeare Henrie. 8. the. 26. chapter, whiche will that no landes or tenementes seysed into the kinges handes vppon enquest taken before escheatours or commissioners bee in anye wise graunted or letten to ferme by the Chaunceller or Tresorer of Englande or anye other the kinges officers, till the saide enquestes or verdites bee retourned fullye into the Chaunceric or theschequer, but all that time shall abide in the kinges handes and by a moneth after the saide retourne, if it bee not so that hee or they that feele themselues grecued by the

saide enquest or that are put out of theire landes and tenementes come into the chauncerie and offer to trauerse the saide enquestes and to take the saide lande or tenementes to ferme, whiche if they doe then the saide Chauncellour, Treasorer, or other officer shal let them haue them to ferme shewinge good euidence, prouing theire trauerse to be true accordinge to the forme of the statute of an. 36. E. 3. to holde till the issue vppon the saide trauerse taken bee founde and discussed for the kinge or elles for the partie, and also fyndynge sufficient suertie too pursue the saide Trauers with effecte, and to render to the kinge the yearely value of the tenementes whereof the trauerse shalbee so taken, if it bee discussed for the kinge. And if anye Letters patentes of anye landes or tenementes bee made to anye other parson to the contrarie, then the same to be void after the moneth. Hereuppon is to bee noted that the shewinge of the euydence is onelye reherced to the lettynge of the landes to ferme & not to the trauerse, For by this statute hee maye trauerse without shewinge anye euydence, but not haue the landes to ferme. Also by these Statutes hee is not bounde to noe certeine tyme for takinge of hys trauers, but onelye for takinge of the landes to ferme, for hee maye tende hys trauerse when hee will so hee desire not the ferme of ỳ lands, But if hee will haue them to ferme hee must tend his trauers within the moneth, as appeareth. H. 13. E. 4. fo. 8. and nowe by the statute of anno. 1. H. 8. ca. 9. hee hath three monethes libertie to doe it. Also note the thinges that he must fynde suertie for, that is to say, to sue with effecte, to paye the rent after the trauers bee discussed, and to doe no waste or destruccion. In this worde rent is emplyed all the arrerages of the rent that shall encurre meane betwene the takynge of the ferme and the discussinge of the trauerse and yet it is not so expressed. Also the lease that is made to hym that

that tendes the trauerse is not of anye terme certeine, but onelye by these woordes Donec discussum fuerit, for the woordes of the statute bee so, and therefore as soone as the trauerse is founde againste him that tendeth it by and by the lease hee hadde in the landes by force of the Statute is voide, as appearethe in. 4. Edwarde the. 4. folio. 29. without anye further proces: Howbeit forasmuche as the woordes bee to holde till the issue vppon the saide trauers taken bee founde and discussed, for the kinge or for the partie, I woulde learne if the partye bee nonsute vppon hys trauerse or that the trauerse bee aiudged againste him vppon a demurrer in lawe, whether the lese shoulde bee voide or not, like as it shalbee vppon the issue founde. Donec discussū fuerit.

And it seemes it shalbee by the woordes compriſed in the saide statute of anno 36. Edwarde. 3. But not by any words compriſed in the saide statute of an. 8. H. 6. For the woordes bee tanque il soit aiudge, and therewith agreeth the booke in 4. H. 6. fo. 12. Also note that before this statute of anno. 8. H. 6. the kynge did vse to graunte the custodye bothe of the landes and body to anye other to whome hee woulde after office and beefore anye trauers tended, and this graunt was good, because it was not then restrained by any statute. Howbeit vppon the trauers tended a Scire facias shoulde haue beene awarded againſt the patentee comprehendinge in the same all the trauerse. And if he had beene returned, warned and came not, his patent had ben voide eo facto, as appeareth in the saide booke of. 4. Henrye. 6. at leaſt wise for the landes, and yet there was then no statute that made them voide, quod nota. And then by and by they shoulde haue beene letten to ferme to him that hadde tended the trauerse. But nowe whether since the makinge of the saide statute of an. 8. Henry the. 6. fo. 17. a Scire facias.

A tl temps le Roy pt̄ grant̄ &c.

Shalbee

shalbee awarded against the Patentee vppon a Trauers, lerne for the saide statute makes suche letters patentes voide for the graunt of the landes, but not so for the bodye, and therefore it seemes a Scire facias shalbee still awarded and the graunt also of the saide landes is not voide till after the moneth. And nowe by the saide statute of anno. 1. Henry. 8. not till after three monethes, and so it shoulde seeme by the booke of. 5. and. 14. Edwarde. 4. and 8. Henry 6. that a Scire facias shalbee awarded at this date notwithstandinge the statute of. 18. Henry. 6. cap. 6. whiche ordeines that all letters patentes made before the kings title found by inquisition returned into the Chauncerie or other matter of recorde shalbee voide. For that statute also extendes but to landes or tenementes no more than the other statutes do, so that the graunte of the bodye or of anye other thinge whiche is no lande or tenement is good at this day before any office or inquisition thereof found. And it is further to bee noted that this statute of an. 18. Henry. 6. makes not suche letters patentes good for anye time whiche hee graunted contrarie to the tenure of that statute but they be voide fourthwith. And learne and enquire if at this daye within one moneth or. 3. monethes after office founde and returned the maister of the kinges wardes and liueries wold aduise of one of the counsell of the kinges courte of Wards and liueries made a lease of ꝑ wardes landes or of an idiotes landes being in the kinges handes for the time of the kinges interest in the same, and after within the tyme appointed by the statute comes a stranger and trauerseth the office, whether in this case he shall haue ꝑ landes to ferme or not. And it seemes that no, because this statut that geeues that power to the maister of the kinges Wardes, was made long time since the statutes of an. 8. or. 18. H. 6. that is to say in the. 31. yeare of king H. 8. whiche statute is generall and no sauing or exception made of thother statutes before.

postea. 76. f.

H. 8 H 6. 17.

5. E. 4. 3 &. 5

M. 14. E. 4. 1

Antea. 53. h

Lre.

And

And then it is a general rule Quod posteriores leges priori bus contrarias abrogant. And some thinkes at this daye for wardes lands, or ideots landes there shalbee no lettynge of them to ferme to him that tended ẏ trauers, if they were letten before the trauers tended by the maister of the kinges wardes, but of other landes it remaines as it was before the making of this statute of a. 31. Henry. 8. and note that if the kinge seise not for anye Wardshippe but onelye for primer seisin because the heire is of full age, if a straunger in this case will trauerse it is to litle purpose. For if the kinge by and by after will make liuerie to the heire, the trauerse is become voide as appeareth 1. Henry. 7. fo. 6. for the kinge in that case hathe no cause to reteine the lande but to deliuer the same to him in whoes right he seised being able for it, and hee that tended the trauers is at no mischiefe, for hee may nowe after this liuerie pursue for his remedye against the heire, and if it shoulde tarrye in the kings handes for the trauerse sake, his highnes shoulde then haue all the profites if the trauers were founde with him for al the time that the saide trauers did depende, whereunto hys highnes hath no right but onelye the heire, and therefore it seemes there shall bee no trauerse but where the landes is to abyde in the kinges handes for a certeine tyme, as for Wardshippe, fine for alienacion, or suche lyke. But if hee that tended the trauerse bee founde heire by office, and is to haue liuerie of that lande as well as the other that was firste founde heire, otherwise it is for the reason made beefore. And so of an enterpleder, For in that case the kinge is bounde to make the liuerie too him that is tried righfull heire, but not so in the case of a trauerse tended by a straunger whiche claimes not as heire, for hee is to haue noe liuerie, but only an ouster le maine, by whych ouster le main ẏ kinge deliuereth nothinge but leaues his owne possession

Traus determyne ẏ lyuere sint 3 Edw. 70. B

12. E. 27 f.

as one that hath no right to keepe the possession anye longer. And it appeareth sufficientlye that hee hadde no right to keepe it after the tyme the heire that shoulde haue it was of full age: Wherefore a straunger in that case cannot trauerse, for so twoe that hadde no right, by trauersinge together might keepe the thirde that hath right from his possession: whiche was neuer the meaninge of the makers of the saide statutes. And notwithstanding that this booke. 1. H. 7 bee that after the trauerse and before the ferme graunted the liuerie was made, yet that makes no difference, for whether the ferme were graunted before the liuerie or after when the trauers is become voide by the liuerie, the ferme whiche dependeth vppon the same is also voide as mee seemeth. And note also that the saide statute. 1. Hen. 8. whiche geeues three monethes for hauinge the landes to ferme makes no mencion of the tresorer of Englande, but onelye of the Chaunceller, so that for anye thinge that ys to bee letten by force of that statute it muste bee done onlye by the Chauncellour and not by the treasorer. As it shoulde seeme as well of offices retourned into the eschequer as into the Chauncerie, and therefore within the moneth after an office retourned into the eschequer, the tresorer maye let the landes to ferme to him that tendes the trauerse accordinge to the saide statute. 8. H. 6. But if it bee to let after the moneth the Chaunceller of Englande muste doe it as it should seeme. And note also that by a statute made anno. 1. H. 8. cap. 11. Any person that sued his liuere in time of king H. 7. vppon anye office that founde hee helde in chiefe where in dede he helde not in chiefe, whiche saide offices were found by the procurement of Empson and Dudley in the tyme of ỳ saide late kinge, maye trauerse thoffice in like maner and forme as he might haue done before the liuerie sued, if it be so ỳ he be now seised of ỳ same landes, sauing that hee shall

stat a° 1hg. nexte de la Treasorer. Ks

not

not bee restored to the meane issues and profites: This statute seemes not to extende to the parties heires that hadde liuerie, but onelye to the partie him selfe. Quere hoc. ou trauers sera tende?
And note that in the court where thoffice is first retourned into, there I shall tende my trauers: as if it bee retourned into the Chauncerie, then in the Chauncerye, and if in the Eschequer, then in theschequer, as in deede all offices virtute officij are retournable in theschequer onelye, and such as bee virtute breuis vel commissionis bee retournable in the Chauncerie. And now by the Statute of. 33. H. 8. cap. 22. 44 E4. 24. a. acc?
No eschetour maye sitte virtute officij onely to synde anye office of landes holden of the kinge of the value of x. li. or a-bone vppon paine to forfait x. li.

Monstrance de droit. ca. 5.

The Statute of an. 36. E. 3. that geeueth a trauerse saithe in this wise. Et sil eit nul home qui met challenge ou claime aus terres issint seisies que leschetour maunde lenqueste en la chauncellarie deins le mois apres les terres issint seisies, et que briefe luy soit liuere de certifier la cause de sa seisin en la Chancellarie, et illeoques soit oye sauns delaye de trauerser loffice ou autrement mre son droit, et illeoques maunde deuaunt le roye a faire final discussion sauns attender auter maundement. This statute speakes bothe of trauerse and Monstrance de droit distinctiuely, whereby a man may gather that if Monstraunce de droit were not by thorder of the common law as it is saide 13. E. 4. f. 8. that it is: yet were it geeuen by this estatute. si mrēs de droit fut al comen ley.
And no booke that beares date before this statut can I find that treates any thing of Monstraunce de droit. Wherfore

without

Eu ql case gist.
Sur recorde trauersable &c

wythout preiudice to anye mans oppinion, mine oppinion is that it is geuen onely by this statute, but whether it bee so or not so, I doe not greatly force. Let vs see what it is, & in what cases it lieth. If the kinge bee entitled by office or other matter of recorde that is trauersable, Notwithstanding there is no cause of trauerse for that the office or recorde is true, in this case anye manne that hath right to the possession of the freeholde of this lande whiche in shewinge of his right is able to confesse this office and auoid it, shalbee receyued if hee bee putte out of hys possession or greeued thereby to come into the Chauncerie and shewe his saide right, which beinge there proued to be true, iudgement shalbee geeuen that the kinges handes be amoued from the possession of ỹ saide landes with the meane issues and profites to be restored vnto the party that sueth the said Monstraunce de droit As for an example, it is founde by office that the kinges tenaunt by knightes seruice in chiefe dyed seised of certeine landes whiche are descended to his heir being within age, where in dede in his life time I recouered this land against him, and suing no execution suffred him to dye seised therof, now vpon this office returned into the Chauncerie shall I come & shewe my right, that is to saye, this recouere and auerre that this lande founde by office is the lande that I recouered or parcell thereof, which being so proued and tried I shall haue an Ouster le maine. Like law it is if the kings tenaunt disseised me of those landes, and I made my continuall claime, or that I had title to enter for condition broken into the saide landes in the life of the kinges tenaunt, and I entred and after was disseised by him. But quere if I did not enter in his life, whether now I may bee holpen by a Monstraunce de droit vppon the kinges possession. And me thinkes not because I haue noe right in that case till I enter, for vntill that time the right continueth still in hym, so that the kinge then hath a right ere I haue a right which

Quere.

ought

ought too bee preferred and take place since it is but for a tyme before myne. And for these cases see the booke in. 3. H 7. fo. 2. But if the king bee entitled by matter of record not trauersable as if he be entytled by double matter of record, in this case I can not haue my Monstraunce de droit no more than I can haue in the like case of Trauerse, vnlesse my title be founde by one of the saide recordes. As take the case to bee, It is founde by office that one suche that holdeth of the kinge disseised mee, and then committed a felonye, vppon whome I entred, after whiche entrie the saide tenaunt was attainted of the felonye, in this case I shal haue the lande out of the kings hands by a Monstraunce de droit causa qua supra. And yet the kinges tytle is here by a record and not trauersable, that is to saye, thatteinder. But what than? My tytle is also founde by office, and appeareth by matter of record, whych beynge proued true doth clearelye auoide the kyngs possession, and that is the reason I shall be receiued in thys case to a Monstraunce de droit, as appeareth in. 3. Edward. 4. And therewith agreeth the booke 4. Henry. 7. where kyng Richard ỳ thirde was attainted of Treason by act of Parliament and found by office that he was seised of certeine land, cometh one B. and saith that in the saide Parliament it was enacted that an atteinder of treason had against the father of the saide B. shoulde bee auoided and annulled, and hee restored to his landes, and ỳ these lands cõprised in the office were in the hands of the said king R. by attainder of his father, & alledged that vpon this Monstraunce de droit the party should haue restitutiõ because his right appered by mater of record. Like law is it wher it is found by office ỳ such a one is attainted of felony & is seised of such landes which are holden of ỳ king, nowe he that hath cause to sue his Monstraunce de droit can not be admitted therunto by reason of these two records. Howbeeit if it bee so that there is noe suche attainder in deede,

sue double matter de record

M. 3. E. 4. 26
A. 4. H. 7. 6

then

then may the party that would sue a Monstraunce de droit saye that there is no suche recorde of attainder, which beinge founde true, hee shalbe receiued to his Monstraunce de droit, as appeareth in the saide booke. 4. H. 7. For nowe is there no recorde against him but onelye the office, and notwithstandinge that by thoffice thattaindour is founde, yet this fyndinge makes nothinge for the kinge: if it bee untrue: For the iurie can neuer finde a matter of recorde, and if they doe, it is to little purpose: for the recorde is euer triable by it selfe, and if there bee suche a recorde it will appeare thoughe they fynde it not, and if there bee none, the finding of it is voide. This may you see that a Monstrance de droit lyeth sometimes althoughe the kynge bee entytled by double matter of recorde, if it so bee that the parties tytle appeare by matter of recorde or else it lyethe not: And yet Choke, Littleton and Nedham, helde oppinion in. 14. E. 4. that if it bee founde before theschetour that one was tenant in taile of certeine landes holden of the kinge the remaynder to another in fee, and that hee in the remainder is outlawed of felonye, and that tenaunt in taile is dead without issue, where in dede he beinge tenant in taile before the statute De donis condicionalibus after that hee hadde issue enfeffed one B. in this case the saide B. shall shewe this matter, and that the utlagarie was after the feffement made and so haue the landes out of the kinges handes by a Monstraunce de droit: But it shoulde seeme their oppinion is against the lawe and the bookes beefore rehersed, unlesse this feffement were founde by office, because it appearethe that the kinge in this case is entytled by double matter of recorde. And note that where the kinge is entitled but by office alone, there the partye maye haue his Monstraunce de droit althoughe his title bee not founde by office, as wel as hee shoulde in the like case if he were to take a trauerse, But otherwise it is where the kinge is entitled by an other

M, 14. E. 4. f, 1. & 7

Petition. 12. Trauers. 7.

recorde

recorde beside the office whiche is not trauersable, there hee shall not bee receiued vnlesse the parties title appeare by mater of recorde. And note that if the kynge haue cõmytted the lande ouer, he that sueth his Monstrans de droit muste sue a Scire facias against the committe euen as hee shoulde vppon a trauerse, and as for takynge the landes to ferme: or for suynge the sayde Monstrans de droit durynge the tyme the heire in whose righte the kyng hathe seised is wythin age. Like lawe is to be vsed as is beefore declared vppon the tytle of Trauerse.

Peticion. Ca.6.

PEticion is al the remedie the subiect hath whẽ ẏ kyng seiseth his land or taketh away his goods from him hauing no title by order of his lawes so to do, in whyche case the subiect for his remedy is driuen to sue vnto his soueraine lorde by way of peticion onely: for other remedye hathe hee not, as it hath ben sufficiently declared beefore vpõ the 15. cha. of the kings prerogatiue. And therefore is his peticion called a peticiõ of right, because of the righte the subiect hath against the king by the order of his laws, to ẏ thĩg he sueth for. And this peticion may be sued as wel in ẏ parlemẽt as out of ẏ parlemẽt, & if it be sued in ẏ parlemẽt, then it may be enacted & passe as an act of parlemẽt, or els to be ordred in like maner as a peticiõ ẏ is sued out of ẏ parlement which is in this maner, first after ẏ peticiõ is endorsed it shal be deliuered to the Chaũceler of Englãd, & thẽ shal ther be a cõmissiõ awarded out of the chaũcerie to find the righte or title of him that sueth the peticiõ, which being found by en-

on poit cẽ ſme

fourme de ſtatut &c.

queſt, then he may enterplede withe the kynge and not be-
Trauers 51. fo̲re, as appeareth in 18. E.3. fo.15/4. E.4. f. 2. 11. H.4. f. 5. et
10. H.4. And if vppon the ſayde cõmiſſion no title be found
fo̲r the partie but onely fo̲r the kinge, yet the peticion ſhall
not abate, but the party ſhall haue a newe commiſſion in
that caſe fo̲r the peticion is butte as voide vntill the
Peticion. 11. parties title be founde by office, and is not to be ſayde depẽ-
dinge vntill that time, as appearethe in. 3. H. 7. Quere
fo̲r he ſued a newe peticion in that caſe. And note that when
Petic doit ee̲ p̲ſue ſolonq̄ le̲ Endorſement. the peticion is endo̲rſed, the partie muſte followe and pur-
ſue the ſame acco̲rding to the endo̲rſement, o̲r otherwiſe his
ſuite is void: becauſe the endo̲rſemente is his warrant ther
in, as appearethe in 18. 22. et 46. E.3. and there fo̲re ſome-
Peticiõ. 1. 3. & 18. 22 E 3. 5. a. time billes of peticion be endo̲rſed and ſent into the kyngs
benche o̲r common place and not into the Chauncerie, and
that groweth vppon a ſpecial concluſion in his peticion and
a ſpeciall endo̲rſement vpon the ſame, fo̲r the generall con-
cluſiõ is que le roy luy face droit et reaſõ, which is as much
as if he hav p̲rayed reſtitution of that that he ſuethe fo̲r: And
there vpon ſuch a generall concluſion the endo̲rſemente is
Soit droit fait as pties which euer is deliuered vnto the Chã
celler, as is declared. But if the concluſion in the peticiõ bee
ſpeciall and the endo̲rſement ſpecial, then they ſhal p̲rocede
acco̲rdinge to the ſayde ſpeciall endo̲rſement. As fo̲r an exã-
ple, the kinge recouereth in a Quare impedit by default a-
gainſt one that was neuer ſummoned, in this caſe the par
tie that loſt can not haue a writ of diſceit vntill ſuch time as
he haue ſued vnto the kinge by peticion fo̲r the ſayde writt
and if in his peticion he conclude and p̲rayе that the kynge
do him right generally, nowe the iuſtices befo̲re whom the
recouerie was had can not examine the deceit without an
originall writ directed vnto them fo̲r that purpoſe, and yet
befo̲re he obteined that writ his right ſhalbe enquired of by
commiſſion, but if he conclude ſpecially in his peticion that

it

it maye please his highenesse to commaunde the iustices to
procede to the examinaciõ, which petition is endorsed accor-
dinglye, thẽ may they do it, wõut any such writ or cõmissiõ
fo. 42 to be sued, as appeareth in. 10. H. 4. So euer the folowynge Trauers 51.
and pursuynge of the thinge muste bee accordinge to then-
dorsement, for howsoeuer the conclusion in the petition be,
the endorsement may be alwayes as it shall please the king
as me semeth, and accordinge to that the party must pursue
it. And note that in euerye petition where the kynge hathe Scire fac' s' le' patentee
graunted the lande ouer to an other, a Scire facias muste bee sine petitione sue.
awarded against the patentee like as it shallbe wheare a
trauerse or Mõstrans de droit is tended, whiche patentee yf
he haue not the whole fee simple but that ther is a reuersion
in the kynge or that the kynge is bounde to warrauntie,
when he appeareth vppon the Scire facias he maye praye a
writte of Searche to bee awarded into ỳ tresorie to search Serche.
what theye can finde for the kynges title, as appeareth in. 9
E. 4. f. 58. where Sottle sayethe that euerye petition muste
make mention of al the kynges titles, for if it be found by
the writte of searche that anye be omitted, the petition shall
abate: & the reason of it is because that yf on this sute of pe-
tition the kinge take an issue with the partie which is found
against him, his highnesse then shal be concluded for euer
more to claime by any of the points conteyned in ỳ sayd pe-
tition. And here with agreeth ỳ boke T. 16 E. 4. But quere 16. E. 4. f. 6.
if search shallbee graunted vppon a trauerse or Monstrans
de droit, because the statute of An 14. E. 3. cap. 13. that con-
cerneth search doth speak only but of a peticiõ, but to that it
maye bee sayde that at the time of making of ỳ statut ther Peticion. 6.
was noe trauerse geeuen. And Skrene sayeth. 7. Henry the
fifth that search shal not bee granted but where one sueth
by petition. And note allso that in euerye petition whe-
ther it bee sued in the parliament or elles where, or whe-
ther the landes remaine in the kinges handes or not in the

kins hãds but be granted ouer, yet writs of search shall be awarded to search the kinks title ere ẏ party shal ẽterplede wᵗ the king. Also it appereth in the boke of. 16. E. 4. before remẽbred ẏ in a petiti the kinges patẽtee had ayd of the king, & there appereth also ẏ if ẏ king be not entitled by any mater of record but without any title do entre into my land wherebye I sue vnto his highnes by petition, ẏ in thys case no search shal be graũted, because no title cã be entended for the kinge in suche case. Thus haue I opened & declared the maner of suing a petition, but to declare specially where yt lyeth & where not it were a long mater to entreate of. But generally & by generall rules a man may briefly declare it, that is to say, in all cases where the partie hath a right a gainst ẏ king, & yt no trauerse or Monstrans de droit, will serue, ther is hee driuen to his petitiõ. As for an exãple, wher the king is entitled by double mater of record. Like law is where he is entitled by a record not trauersable, as take the case, the kynge recouered by assent and wythout title, a straunger that hathe good title shall not falsifie this recouerie by a trauerse or Mõstrans de droit, but is driuen to his petition, so it is where the kinge recouerethe by erronyous proces the partie shall not haue a writ of errour, vntill he haue sued by petition for it. So likewise it is if landes are holden of mee bye knightes seruice a straunger bringes a Precipe in capite of those lands against my tenant & recouereth by defaut, although by this recouerie, I am not put out of possession of mye seignorie but that the tenaunt holdethe of me as hee did before and also of the kinge by conclusion, yet in this case if the recouerer dye his heire wythin age, and the kynge seisethe the ward, I am driuen nowe to my petition for the ward, as appearethe in. 17. E. 3. for thys ys an other thinge than euer I was seised of. Also it is a generall rule that where a straunger that hathe title can not

17. E. 3. f. 36.

entre

entre vpon a cõmon parson but is driuen to his action, there he cã haue no remedy against the king but only a peticiõ, as take the case to be. It is found by office the kings tenant in chiefe died seised his heire within age where in dede ỳ sayd tenant had nothing but by disseisin done to me, & I suffred him to die seised wout any claim made, in this case I get no remedy by Monstraunce de droit or trauerse, but am driuen to mye petition. And so in all cases like wheare mine entre should be tolled if the lands were in the hands of a commõ person, as appeareth in 8. E. 9. H. 4. Also where as the kinge doth entrè vpon me hauing no title by mater of recorde or otherwise and put me out, and detaines the possession frõ me that I can not haue it againe by entrie without suite, I haue then no remedie but onely by petition. But if I bee suffred to entre, mine entrie is laweful, and no intrusion: or if the king graunt ouer the lands to a straunger then is my petition determined, and I may nowe entre or haue mye assise by order of the common law against the said straũger being the kings patentee, as appeareth in 4. E. 4. f. 25. & 9 24. E. 3. f. 34. And a great difference is betwene this case & the case wher the king is entitled by double mater of record or suche like, for in these cases notwithstanding the graunt made ouer by his highnes of the lands to an other, yet am I driuen still to my petition to the king and haue no other remedye, but it is not so in this case: and the reason of this diuersitie is betause that when his highnes seiseth by his absolute power contrarie to the order of his lawes, although I haue no remedy against him for it but by peticiõ for ỳ dignities sake of his person, yet when that cause is remoued & a comon person hath the possession, then is mine assise reuiued, for now the patentee entreth by his owne wronge and intrusion, and not by anye title that the kynge geeueth hym for the king had neuer title ne possession to in that case: and

ou Entre seruoit tolle sur Comen person.

M. 7 H. 4. fo. 27. 36. et 41. T. 9. H. 4. f. 7 et 11.

on le Roy entra Contra moy.

Poſt. 83. Br.

M. 9 H. 4. 4. Dr. 2253. 7. E.

Assise. P. 156

33 Ass. p. 23. acc.

therfore not lyke the other cases before, where the kynge hath the landes by the order of his lawes that is to saye by
Trauers. 134 doble mater of record or such other like. And this apperethe in 4.E.4.f.21.et 25.et m.24.E.3.f.34.et 33.li.all. Like lawe
Pur rent on seignioxy suspend is if I haue a rent charge oute of certaine lande and the tenant of the land enfeffed the kinge by dede enrolled, nowe during the kinges poſſeſſion I muſt ſue by petition, but if his highnes enfeffe a ſtranger I may diſtreine for my rent vpon the ſtranger, and ſo is it in all the caſes before. where a man may haue his trauerſe or monſtrance de droit, if the lãds be once out of the kings hands, the party thẽ may haue his remedie that the comõ law geueth him: for in all theſe caſes the petition did lye onely for the dignitie of his perſon and not for the right that he had to ẏ poſſeſſion of the thing. But if the kinge purchaceth lands holden of mee, learne what remedie I may haue for my ſeignory during ẏ kinges
T. 45 23. 6. E. M 47 E 3. 21. E. ſi le ſeignioxy eſt extinct le petit cape poſſeſſion: for wilby ſayeth in 20.E.3. that I haue no remedie in ẏ caſe and if his highnes make a feffmt of theſe lands to
Aſſiſe. 124. hold of him ſelf, yet can I not diſtreine for my ſeignorie like as I might do in the caſe of the rent charge before, becauſe there can not bee ii. ſeignories of one ſelf land, but am driuẽ
Petitiõ. 18 to my petitiõ in this caſe, for the king vpon this feffmt by order of his lawes ſhoulde haue reſtued the ſeignorie in mee that is to ſay, to haue made the feffee to hold of me of whome it was hold before, as appereth in 46.H.6.f.3.E.3.f.17.E.3.f.59
Antea. 38.h H 33 H 6. 7. e and ſo hathe it ben vſed alwayes where his highnes hathe lands by forfaiture of treſon holden of a cõmon perſon, if he make a feffement of thoſe lands it muſt be Tenend of them that they were holden of before as I haue opened vpon the xii. chapter of the kinges prerogatiue. And ſo it is where the time is cõcluded to his highnes for a mortmain: But that is deuolued
geuen by the ſtatut de religioſis. Alſo if the kinge diſſeiſe my tenãt, during this poſſeſſiõ I haue no remedie for my ſeignorie but only by petition, & if ẏ kinge ẽfeff mye tenãt to hold

of

of his highnes, yet haue I no remedy for my seignorie, but only by peticion. But if one holde certeine landes of mee which are falsly found by office to be holden of the kinge in Capite, and the king seiseth them & enfeoffeth my tenaunt thereof to holde of his highnes, in this case I may nowe distreine for my seignorie & am not oute of possession, & these cases appere. 20. 32. et. 46. E. 3. fo. 18. & the reason of the diuersitie is this, because that in the laste case my seignorie was neuer suspended, but euer more had his being and that notwithstandinge thoffice, for it did not appertaine to mee to trauerse thoffice and discharge the tenure, but that matter was left to my tenant to doe, and seeinge hee did it not hee hath charged him selfe of a tenure by way of conclusion to the kinge as well as to mee, but it is not so in the other case. Also it is to bee noted that if the kinge seise landes in title of Wardshippe and make a fefement thereof in thys case the heire neede not to sue his peticion but may haue a scire facias, to repele the said letters patents, because ỹ king was deceiued in his grant as it appereth. T. 7. H. 4. fo. 17. & M. 21. E. 3. fo. 50. For there the king himselfe is in possession still till liuerie be made so ỹ heire there hath no cause to sue by peticion, & the kinge is bounde to deliuer it vnto him in whose right he seised. Also note that sute by peticion can be to none other than onely to the king, for no such sute shalbe made to the Quene or to the lord prince, for these parsonages haue no such prerogatiue, as it appeareth 10 & 11. H. 4. et. 10. et. 14. E. 3. but though the kinge bee seised sometime in an other bodies right and not in his own, yet the sute that is to be made must bee by petition as well as if hee were seised in his owne right, as appereth. 10 H. 4. And as I said in the beginning a manne shall haue his peticion for goods as well as for landes, as where theschetour seyseythe goodes of one that is outlawed and hathe accounpted for them in the Eschequer and after thutlagarie is reuersed

Auowrye. 113. 323. Assise. 122. 124.

Peticion nest pas forsq̃ al Roy.

Trauers. 51. Le roy est seisi en auter droit

Peticion. 4 Voucher. 135. Scire facias 135.

Pur brens.

Peticion.8.

Peticion.10

Peticiõ.11.et 17.

in this case ỹ partye hathe no remedy for his goods but onelye by peticion. And this case you shall see in. 34. H.6. Holwe be it Catesby & Hussey hold oppinion to the contrary here of H.1. H.7. And learne if a peticiõ be sued for lands and the plaintife be nonsute whether it be peremptorie or not, beecause some saye that that sute is as it weare hys writ of righte, and hereof see the booke. 11. H.4. f.3. H.7. f.51.a

Nonsute. Sir Tho. 12 D. Chcyn. Guest peremptorie

Where a Scire facias must be sued before a lyuerye or Ouster le maine. Ca.7

IF the king be seised of a ward and grantethe yt durante minore etate now when the heire commeth of full age and sueth his generall liuerie he nedeth not to sue a Scire facias against the patẽtee, because his estat is determined by the ful age of ỹ heire, and yet it may be that the heire had forfaited his maryage vnto the patentee, and then hee hathe good cause to reteine the lande til he bee satisfied of the forfaiture. But the lawe shall not entende anye suche forfaiture to bee, and therefore ther nedeth no Scire facias be sued. Like law is it, as semeth if the king graunt the wardshyppe for no time certaine, but quamdiu in manibus nostris fore contigerit, if he make a special liuerie vnto the heire beeinge within age, there needed no Scire facias to be sued, so is it where the grant is but durante beneplacito nostro, but if the kyng haue land in ward and enfeffeth therof a straũger some think the heire nedeth not to sue any Scire facias against the feffee but at his pleasure, and some other thinke he muste, beecause his estate is not determined by the full age of the heire, as it is in the firste case I put before. And it may be that an auncestor col-

fitzh. 257. f.

lateral

laterall vnto the childe hath released with warrantie whi-
che is descended which the feffee might pleade if he came in
by Scire facias or els by the liuerie the saide warrantie is vt-
terly lost, & these cases appeare 9.7. H.4. f.27.30. & 43.10. H. M.12.E.3.59
6. f.20 9.1. H.7. f.11. & 5. E.4. f.3. Howbeit me thiks it were 2.H.7. f.2
wisedome for the heire to sue a Scire facias to thentent that
he therebye with the kinges helpe might repelle the sayde
letters pattents and bringe them as it were out of his way,
whiche thinge hee may soner bringe to passe by the kinges
sute than by hys owne. Also the heire when hee sues liuery
nede not to sue anye Scire facias againste him that hathe the
landes to ferme vppon a trauers, as appearethe in 1. H.7. Liuery.P.18
for hee hath noe terme certaine in the land but donec dis-
cussum fuerit, whiche woordes are becomme voyde after the
heire is of full age, because it can not be then discussed with
oute preiudyce of the heire: and therefore voyde. Then fur-
ther let vs see wheare hee that sueth by petition or that ten
deth his trauers or Monstrans de droit shall sue a Scire faci
as and where not. And as to that it is a generall rule that yf
the kynge haue graunted the wardshyp of the landes ouer
for any terme certaine, or granted any other certaine estate
in the landes, he that sueth his petition, Monstrans de droit,
or trauerse muste sue a Scire facias againste the kinges pa-
tentee in suche case, but hee nedeth not to sue any agaynste Trauers 25.
the heire in whose righte the king is seised of the lande, be-
cause he that sueth doth not pleade withe the heire but one-
lye with the kynge or such as hathe his interesse, as appea-
rethin 37.lib.ass. Like law it is if the kyngs grant be but
durante beneplacito nostro, or that it bee made hangynge
the trauerse, petition, or Monstrans de droit, in this case hee
that suethe neede not to sue any Scire facias. And these cases
appeareth in 5. E.4. f.3. & 13. E.3. And note that if the kynge Brief p.260.
graunt the wardshippe to one whiche graunteth it ouer to
the husbande and to his wife, then must there a Scire facias
bee

be sued bothe againste the seconde lessee and the patentee, but the wyfe nede not to bee named in the Scire facias, For there lyethe no voucher in this Scire facias Holwe beit in a writ of garde she shoulde haue bene named, but also of the voucher, and this case is adiudged. 46. Edwarde the thirde and yet neuertheleste Neuton is of oppinion in. 8 Henry the sixte f. 17. that no Scire facias shallbee awarded againste the lessee in this case but onelye against the kings patentee. And learne if the kinge graut but the bodie alone whether there nede anye Scire facias to bee sued or noe. Also note this case, that is to say, where the king seised for wardshippe beefore office and made a graunt ouer, and after office was founde wher bye it appeared that the childes father in whose right the kinge seised, was but tenaunte for terme of life, the reuersion to an other, in this case he in the reuersion hadde an Ouster le mayne without suinge anye Scire facias againste the patentee, as it appeareth in. 10. Edwarde the thirde, and at this daye the case is more stronger for suche a graunt were voide beecause it is beefore office. And therefore vppon anye suche voide graunt there neede no Scire facias And in. 14. Edwarde the fowerth fo. 1. it appearethe that one had trauersed an office whiche was sente into the kinges benche to trye and had forgotten to sue his Scire facias, and yet hee was suffred to goe agayne into the Chauncerie to pray a Scire facias vpon the firste trauerse for it was saide that the Chauncerie is a courte of conscyence and for that cause the thinge that was there amisse may be reformed at all times. And learne if this Scire facias bee sued againste manye and one of them dyeth whether this shal abate the trauerse, Monstrans de droit, or petition wherupon it is sued or elles onelye the Scire facias, It semes that nothinge shall abate but the Scire facias because no mentiō is made of the tenaunt neither in a trauerse Monstrans de droit or petition. And of this mater see the booke in P. 7 H. 4. fo. 28. 33. b.

223. 15. B / Brief. 618. — because

Antea. 68. a

Assise. P. 156

Ouster le mayne.

Ouster le main is the iugement that is geuen for hym that tendeth a trauerse or sueth a Mōstrans de droit or petition, for when it appeareth vpon the matter discussed that the kinge hathe no right nor title to the thinge he seised, then iudgement shalbee geeuen in the Chauncerie that the handes bee amoued: and thereuppon Amoueas manum shalbee awarded to the schetour, whiche conteruailes as muche as if the iudgemente weare geeuen that hee shoulde haue againe his lande as appeareth, in 24. E.3 f.35. and this iugement sometime is geuen in the kinges bench and not in the chauncerie, & that is in case where the parties dessende to an issue. then for the tryall thereof theye of the chauncerie muste awarde a venire facias returnable in the kings benche at a certaine daye, at whiche day notwithstandinge that the shirike returne not the writ, yet the Alias venire facias shall not bee awarded out of the chäcerie but oute of the kinges bench: for there and no where els it is recorded, quod vicecomes non misit breue, as appearth in. 13. E. 4. f. 8. And when the issu is found for ẏ partie they of the kinges bench shall gaue iugement & awarde an ouster le maine without suinge for the same in the chäcerie, as appeareth in 21. H. 7. f. 29. ff. all. and yet the record of the issue that was tryed was not sent thether but onelye ẏ transcript thereof, but what then, the iudgement is to be geuen vpon the verdit which is there of record, and when bothe courtes bee courtes of the common lawe and the kynges courts, theye vse not to remaunde anye thynge to the place from whence it came but to geue iugemt there where it is tryed, and Sharde sayde that when a record comes once into the kynges benche, it shall neuer go from thence.

Alſo

Catt.

Judgt de ouster le mayn donē en Banke le Roye.

f.o. 35. 2

Liuery. P. 10

29 ass. p. 43.

Also note that sometime there goeth an Ouster le mayne as well to the kinges patentee as to the eschetoure and that is where the kinge hath graunted the thing that hee seised to any other, but notwithstanding ẏ there go such wrytes of Amoueas manum bothe to theschetor and to the partie, yet the kynge is out of possession as sone as iugement is geuen in the chauncerie, not forcing whether any of these wrytes bee awarded or not either to theschetoure or to the partye: and thereupon the partie for whom iudgemente is geuen may entre forth with into the landes and shalbee sayde noe intrudor, as appeareth in H.10.E.3. and the reason of yt is because the iugement tyethe not the kynge to the deliuerye of the possession, but onely to leaue hys handes of the possessiõ. And note that if a Diem clausit come to the eschetor, he by vertue of that wrỹte beefore he make any enquirie may seise the lande for the kynges beehofe, whiche after he hath once seised, if after by office noe title bee found for the king then the party ẏ ought to haue agayn the land, may sue for the same in the chauncerye where the office is returned and then Amoueas manum shallbe awarded, for vntill the makynge of a statute at Lincoln. Anno. 29. E. 1. called the statute De escaetoribus the partie hadde noe remedye in suche case but onelye to sue vnto the kinge himselfe, as it appearethe by the sayde statute, and nowe that statute greues an Ouster le maine vna cum exitibus, Notwithstanding this Ouster le mayne maye not bee sued by parcels no more than a liuery and therefore if diuerse wrỹttes or commissions bee awarded into diuers counties to enquire after the death of A. B and in one countie it is founde that hee holdethe nothynge of the kinge but in socage, and in the same countie and bye ẏ same ẽquest it is foũd ẏ he holdeth of an other by knights seruice yet ẏ lord by knights seruice gettethe noe Ouster le main vntil ẏ other ẽquests be also returned in, Causa qua sup

Assise p. 156.
fo. 3. a.
9 ass. p. 8.
10 ass. p. 2 b.

Antea. 148.

For

for if he should, then he should haue it for the lands and not for the body, and so should haue it by parcelles, for the bodie may not be deliuered as long as there is anye enquest to be returned in. And the reason of it is, because that enquest may finde a tenure of the king by knights seruice in chiefe, in which case his highnes ought to haue the whole landes, and if it bee but a cõmen tennre by knyghtes seruice, yet hys highnesse at the leaste oughte to haue the preferrement of the bodye, yea & thoughe the lorde of whom it is founde to be holden be the archebyshoppe of Caunt or suche a one against whõ the kings prerogatiue will not hold for the landes, yet because it holds for the bodies he getteth no Ouster le maine vntil al the offices be returned in, for the reason before made, as appeareth in 16. E. 3. Howbeit by fauour and grace of the court tharchebishoppe had his Ouster le maine before the other offices returned. And so note howe in tymes past men haue sued Ouster le maine vpon a seisin made for the kynge although the office founde afterward did not entitle his highnes. Howbeit at this day it is not so vsed, for the schetor will not seise vnlesse there be an office found, although he might lawfullye do it by the words of the writ Diem clausit, whiche vsage I do nothinge mislike, considering the great trouble it auoideth that might els ensue to the kinges subiectes. And note that in all cases where the king is seised or in possession of the lãd by office or any other mater of recorde, his highnes seisin can not be deliuered out of him vntill suche time an Ouster le maine bee sued, as if the king be seysed by office of the lande of any Idiots or for ánũ, diem & vastũ of lands of any that is attainted, in these cases he that shoulde haue these landes after the kynges title determined muste sue an Ouster le maine, otherwise yt is where the kyng is not seised of the land but only entitled to the profites, as of the landes of him that is outlawed in a personall action, or of clerke conuicte or suche like, there nede

Antea. 9. B

Liuerie f. 29

Ant. 35. B.

nede no Ouster le mayne to be sued, as appeareth in. 8. E. 2. 4. E. 3. and. 9. H. 6. f. 20. and if the landes whiche is seysed into the kynges handes bee holden ioyntlye bye manye yet euery one of them by hymselfe may sue hys Ouster le maine of his owne parte withoute his companions, as appeareth in. 2. H. 4.

Trauers 28.

Assise p. 166.

Lyuerye. Ca.9.

The maner of the suing of a general liuery doth partly appere in the title of Liuerie in the great abridgemēt of Justice Fitsherbert A. 12. H. 4. ti. Liuerie H. 4. & A. 21. R. 2. ti. Liuerie. p. 5. Wher it is declared ỳ after the heire that was in the kings warde is come to full age, then a writ De etate probanda shalbe awarded vnto the shirife of the shiere where the said heire was borne, to ēquire of his age, in which case it is required by the lawe ỳ euerye one that shall passe in that enquest shalbe of the age of. xlij. yeares, meaning therby ỳ they & euery one of them shoulde be of full age at birth of the childe, beecause that suche haue better knowledge and remembraunce then other of lesser age haue, and that the heire that is in warde enforme the enquest by certaine signes and tokens of the tyme of his birthe, as to say, that that yeare there was a great tempeste or a greate plague, or suche like, which signes so geuen in euidence shalbe returned by the shirifue as well as the principall mater. But whether it bee requisite to haue xij. or a lesse number in the sayde enquest or not, learn, for soome think that any number from two vpwarde will serue, beecause the triall is by proues, and see the newe Natura breuium fo. 136. wher it appereth that this writ of Etate probanda was

fo. 253. E

was diretted to the eschetour of the countie where hee was borne and not to the shiriue. Howebeeit note alwayes that theye where the lande is shall neuer enquire of this mater, vnlesse the birthe and lande weare bothe in one shiere, for theye haue enquired of it allredy, that is to say when theye vyd fynde the firste offyce. Thus when theye haue founde his age, that enqueste shallbee returned into the Chauncerie, and from thence shalbee awarded a writte to the Lorde Keeper of the priuie seale, signifying vnto him that the heire is of full age, and vppon that a priuie seal shallbee directed to the Chamberlaine of Englande to receiue his homage, whiche beynge receiued, the sayde lorde Chamberlaine shall certifie the lorde Chauncellor by writte of the receipte thereof, and then shall the heire haue his liuerie. But it seemes that if the heire were neuer in warde but of full age at death of his auncestor and so founde by office, that thenne hee shall haue liuerie as is declared vppon that office onelye, without suynge anye writte of Etate probanda: for the writtes of liuerie in thys case make no mention of anye Etate probanda as they doe in the other case, but if the heire bee withein age and in the kyngs warde and after when he comes to his ful age other landes descende vnto him whiche the kynge allso seisethe by an enqueste that fyndes the heire of full age, yet this not withstandynge hee must now sue an Etate probanda vppon bothe offices, as appearethe in M.13. Henrye the fowerthe. And the reason of it is, beecause the fyndynge of hym of full age is but as voide as longe as there is a recorde whiche founde hym within age, to the whiche record the kynge mighte cleaue vnto as the best recorde that makethe for hym vntyll suche tyme the contrarie thereof be proued bye the writte of Etate probanda. Howebeeit at this day the statut made Anno. 33. H. 8. hath much abridged

fitzh. 256. E

M. 13 H. 4. 6. a.

the

the fees that haue bene geuen vpon the ſute of a generall liuerie, namely for liueries to be ſued of clere yearely value of v.li. or vnder, and that it may be ſued without any office to be founde. But I do not ſee that the maner of the ſute is in any other point altered or changed by the ſayd ſtatute but it remaines as it did before And that ſtatute alſo geueth men licente to ſue a generall liuerie of landes not exceedinge the cleare yerelye value of. rr. li. whereby I ſee no let but that a man may ſue his generall liuerie alſo for landes aboue the yerely value of rr li. as he might haue done before the makynge thereof, for this ſtatute is not contrarie to anye lawe that was before in that pointe, ſauinge that a general lyue uerie vnder the value of. rr. li. can not paſſe or be ſued yf he haue not firſte his warrant from the maiſter of the kynges wardes and liueries, ſurueyours, atturneys, and generall receiuour, or three of them, ſigned and ſubſcribed with their names and hands. Thus may you ſee the maner of the ſuing forth of a generall liuerie, which liuerie may not be ſued by parcelles as I haue ſayde before, but entierlye, that is to ſay, of all the landes the kinge is or ought to be ſeiſed of in his right that ſues the liuerie. And therefore if the heyre ſue liuery but of parcell of that that is founde by office, or yf the auncеſter weare ſeiſed of other landes than are foũd bye office, yf the heire ſue his generall lyuerie beefore an offyce thereof founde omittinge them in the liuerye, the lyuery is miſſued, as appereth in. 12. R. 2. 44. E. 3. f. 2. H. 7. and therefore it beehoues the heire beefore hee ſue his lyuerye to cauſe an office to bee foynde in euerye ſheere where hys auncеſter hadde anye landes. And this entier lyuerye is intended as well of landes holden of other lordes beinge in the kinges handes as of the landes that are holden of the kinge, and therefore if a manne holde of the king in chiefe by knightes ſeruice, and of other lordes in ſocage

Antea. 58. f.

Fitzh. 257. A
Myh4. 26 fi.
T. 12. R. 2.
44. E. 3. f. 18.
et. 25. f
2. H. 7. f. 2.
Mh7. 26. f

socage and die his heir being a daughter within the age of xiiii. yeres, in this case when the sayd daughter cometh of the age of xiiii. yeres she getteth no liuerie of the lands holden in socage: but must tarry till she be of the age of xvi. yeres, ỹ she may then sue liuerie of the whole, as appereth. 35. H. 6. H.35.H.6.
But note that in some cases one shal haue liuerie of parcel, Liuerie.19.
and that is where landes descend to diuerse daughters and one is within age and the other of full age, now shee of full age shall sue liuerie with a partition of her parte of all thinges that are seuerable: and this liuerie is wel sued although it be not of the whole lãds descended, but if ther be any things in the kings hands not seuerable, as aduousons or such like, that must so remaine still vntil the other bee of full age, as appereth. 38. H. 6. And so note that in a general liuerie if any thing be omitted, the liuerie is missued: and therfore some saye that after such a general liuerie had there shalbe a writ awarded to enquire of the concelement, that is to saye, whether the heir hath left out of his liuerie or not any of the lãds that were his auncestors, which writt is called breue de terris concelatis. And see the statut. 28. E. 3. ca. 4. that geues the rents to them that sue liuerie when the rent day cometh although it cometh nert day after their liuerie. And loke more for liuerie in the expositiõ vpon the third chapiter of the kings prerogatiue.

Reseisir

Ca. 10.

Reseisie lieth where a general liuere or ouster le main is missued by any person or persõs vnduely and not according to the forme and order of the law, or vpon an office which is insufficient in the law for the partie to haue liuerie or ouster le main, in this case the king may

reseise the lands without suing any proces against the par
Liuerie P.E. tie, and shalbe aunswered of all the meane issues and pro
fits receiued and taken from the time of their first seisier if
it were sued out of his hands by an ouster le main, and if by
a liuerie, thē but from the time of the liuerie. And the partie
that hath pursued it shalbe accompted none other then as
Antea.41.b an intruder vpon the kings possession after office, in which
case no freehold shalbe aiudged in him, nor his wife of that
possession shal haue any dower, as appereth 18.E.3.21.E.3.
H.2.E.3.f.1. fo.1.& 24.E.3.fo.34. But if one haue liuerie or ouster le main
24.E.3.34. by due proces, and after a record is found in the tresorie or
ells where, or an office in the contrie, whereby the kinge is
30.ass.p.28. ētitled of a title growē vnto hi before ỳ suig of ỳ' sayd liueris
or ouster le main, although the partie shoulde haue had no
liuerie or ouster le main in case the sayd records had then ap
pered vnlesse he could haue auoided the sayd records, yet for
as much as they did not then appere, he shal not bee noine
after liuerie or ouster le main cast out of his possession with
out a Scire facias to be pursued against him, for so hath the
statut prouided that was made at Lincoln in ỳ 29. yere E.1
called statutum de Escaetoribus, the tenour wherof is this
Ad parliamentum regis apud Lyncolne tentum in octa
bis sancti hillarii anno regni sui vicesimo nono, per consilium
regis concordatum est coram domino rege, ipso rege consē
tiente et illud extunc fieri et obseruari precipiente, de consi
lio venerabilis patris w. de langtō Couētr' et Lychł. episcopi
tunc eiusdē regis Thesaurarii, Iohannis de Langton Cancel
larii et aliorū de consilio tunc ibidem presentium, et coram
rege, videlicet, Cum inquisiciones per escaetores suos capte
per quecunque breuia Regis in cancellaria ipsius domini re
gis fuerint retornī, et per easdem inquisitiones compertum
fuerit

fuerit quod nihil tenetur de ipſo domino rege, per quod cuſtodie terrarum et teñ huiuſmodi ratione inquiſitionis in manum domini regis per ipſos eſcaetores capte ad ipſum dominum regem nullo modo pertineant: quod ſtatim & abſque dilatione aliqua mandetur per breue domini regis de cãcellar' precipiend' quod eſcaetores de terris & tenementis ſic in manum domini regis per ipſos captis manum ſuam amoueant omnino, & exitus ſi quos leuauerint de ipſis terris et teneñtis ſic in manũ domini regis p ipſos captis de tempore quo terre & teñ illa in manu domini regis exti terint, integre reddant ipſi vel ipſis cui vel quibus per inquiſitiones prius per eoſdem eſcaetores captas compertũ fuerit quod terra et tenementa illa debeant remanere, ſaluo ſemper domino regi, quod ſi poſtquam eſcaetores ſui manus amouerint, per breue ipſius domini regis, vt predictum eſt, aliquid contigerit inueniri in cancellaria vel ad ſcaccarium, vel alibi in curia ipſius domini regis, per quod cuſtodia terrarum aut teñ eorundem, de quibus eſcaetores manus ſuas amouerit in forma predicta domino Regi pertineant, quod ſtatim premuniatur ille, in cuius ſeiſina tenementa predicta fuerint per breue de cancellaria, quod ſit ad certum diem coram domino rege, vbicunque. &c. oſtenſ. ſi quid pro ſe habeat vel dicere ſciat quare dominus Rex cuſtodiam earundem terrarum et tenementorum habere non debeat, iuxta formam euidentiarum ſeu memorandorum pro ipſo rege compertorum. Et ſi venerit, & pro ſe oſtendat quare eadem cuſtodia ad dominum regem non pertineat aut pertinere non debeat immo quod remanere ſibi debeat recedat quietus, & cuſtodiam ſuam retineat. Si autem premonitus non venerit, vel venerit, & nihil ſciat dicere, quare rex cuſtodiam illam habere non debeat. ſtatim reſeſientur terre & tenementa illa in manum domini regis nomine cuſtodie tenend. vſque ad legittimam etatem hered. eorundem, ſicut ſuperiꝰ dictum eſt

Saluo &c

Et si compertum fuerit per inquisitiones per escaetores suos factas et retornatas, quod custodia eorundem terrarum et teñ in inquisitionibus contentorum, et in manum domini seisitorum domino regi remanere nō debeat, quod statim mãde tur escaetoribꝰ quod manus suas amoueant, et exitus integre reddant. &c. Eodem modo si postea compertum fuerit per euidentias & memoranda in cancellaria aut scaccario vel alibi, vt predictum est, quod dominus rex custod' eorum habere debeat respondeatur ipsi domino Regi de exitibus integre per manus illorum qui terras, aut tenementa illa tenuerint a toto tempore, postquam terre et tenementa illa primò in manum ipsius domini Regis per escaetores suos capta fuerit per breuia supradicta, & iste modus de cetero obseruetur in cancellaria, nō obstante quadam ordinatione nuper per dominum regem facta de terris & teñ in manum suam per ministros suos capt' & non liberand' nisi per ipsum dominum regem, & prout continetur in quadam diuidenda inter ipsum regem & cancellarium facta. Cuius vna pars penes cancellarium remanet. Statutum de escaetoribus editum. 29. E. 2.

Also a yeare before the makinge of this statut was there an other statut made entitled articuli super cartas **which in the 19. chapiter therof saith in this wise.** De rescheiue la ou lesche tour ou le vicont seisont en le main le roy terres la ou il nad reson de seiser, et puis quant troue est la non reson, les issues de mesne tẽps ount este ceo en arrere retenꝰ et nad rendus quant le roy ad le main ouste, voet le roy que desormes la ou terres sont issint seisies et puis le main ouste pur ceo que il ny ad raison de seiser ne tenir soient les issues pleinment rẽdus a celuy a qui la terre demurt et auoit le dañ resceu.

By this statute it plainly appereth how that before the making therof there was no ouster le main **graunted** vna cum exitibus **although it might neuer so plainly appere that the kinge had no cause to seise. Howbeit that mischief is now remedied by both these statutes. Also by the one of these statutes**

sutes. Also by thone of these statutes it appeareth that the Ouster le maine in suche case might not be graunted without suinge to the kinge himselfe, which is also remedied by this statut de escaetoribus, which statute although it make no mencion of liueries, but onely of ouster le maine, yet liueries are taken to bee within the compasse and prouision of the same. And where the letter goeth onelye to the cases where the kinge seiseth before office, and after warde thoffice that is founde doth giue his highnes no title, that there the party may haue his Ouster le maine, makinge no mencion of an Ouster le maine to be graunted vppon anye petition, trauerse, or Monstraunce de droit, as in deede a trauerse was not in vre at that time, yet men by an equitie extende this statute de Escaetoribus bothe to the one and too the other, because the statute is beneficiall, as it appeareth 9. E. 4. and in diuers other bookes. And Yeluerton there saieth that if after liuerie or ouster le maine an office bee founde whiche entitleth the kinge of a title growen vntoo him since the liuerie or ouster la maine granted that in that case this statute notwithstanding the kinge may reseise wout a Scire facias, for the woordes are onelye where a record or an office is founde that maintaineth the title whereby ỹ kinge first seised. Howbeit manye holde oppinion againste him, and saie that it was in the selfe same mischiefe the statute was made for, tamen quere, for this statut de escaetoribus shoulde seeme to be meant onely to remedy that ỹ was a mischief at comõ law before ỹ making of ỹ said statut, as where there was no record found at ỹ time of ỹ liuerie or ouster le maine sued to let or hinder the partie from suynge of theire saide liuerie or ouster le maine, but afterwardes was there found such a record, now this notwithstandinge would the king reseise & putt the partie from his possession wout answer or any proces sued against him, wherupon he might answer & so driue him to sue by peticion & make him

9. E. 4. 54.

Reseisin sans Scire fac.

Antea. 60. 2. 64 E

Quere.

render all ye mene profite, which was a greate mischiefe & hinderance to ye partie, for remedie whereof this statut was made: but the like mischiefe or hinderance is not where the kinge is entitled by a title growē since the liuerie or ouster le maine, for here ye partie shall not aunswere the profites but frō the time of this title growen. And also the kyng doth him no wronge, for it standes wt and affirmes ye liuery or ouster le maine, & the king thereby makes not ye party an intrudor as he doth in the other case, & if the said Yeluertons opinion should not be lawe, they woulde make ye the kinge could not seise vpon an alienation wout licence made and found by office since ye liuerie or ouster le maine sued, which were no reson, & therefore I think the saide Yeluertons opinion should preuaile in this case. And to the same intente & effect be those bookes ye I can fynd, for I can finde no Scire facias sued but in cases of a title growen before the liueries or ouster le maine: & therefore in a Scire facias sued vpō this statute against ye party ye had liuerie or ouster le maine beeing tenant of the land at ye time of Scire facias sued, he was demyed in the selfe same plight & course against the king as he was at time of ye suing of his liuerie or ouster le main: for where he had made a feffement by licence & taken an estate againe iointly to him & other, yet this scire facias dyd lye against him soly & did not abate, for the iointenauntes. So was it aiudged in a scire facias sued vpon this statute ye the partie must maintaine the title, whereby he hath liuery or ouster le maine, & must maintaine it so that it is & was a good title & sufficient to haue liuerie vpō, notwithstanding any recorde that is now found, as take the case to bee this, one hath liuerie as sole daughter & heire, & after by office it is founde ye she hath a sister, which ought to haue had liuerie wt her, wherupon a scire facias is sued against the pertye ye had liuerie, to come & shew why the land should not bee reseised, if she come & will saye that they be daughters by se-

uerall

Reseisin

ueral ventres, & that this lande was geeuen to her father & mother in speciall taile, & so ought shee to haue the liuere as she had, ỹ is to say soly, this plea wil not serue her, because it doth not maintaine ỹ liuerie: for how could she haue had liuerie soly, vnlesse this matter had bene so found by office. For if this second office had appeared before the liuerie, she coulde not haue trauersed it, vnlesse she had made title, and then title can shee neuer make againste the kynge as heyre vnlesse the saide title bee firste founde by office. Wherfore no more than she might trauerse the said office if it had bene found before liuerie, no more may she trauerse it now in this scire facias after liuerie, as it appereth 30.li.Ass. and so note that ỹ recorde can not bee trauersed in this scire facias in no case vnlesse it were trauersable before liuery or ouster le maine. Also in the new Natura breuium fo. 26 & in. 5. H.5. I finde a scire facias sued vpon this statute against him that had liuerie, because an office hath found an other to be nerer heire to the auncestour that dyed than was hee that sued liuerie. So alwaies as farre as I can finde it is sued vpon a recorde ỹ disproues the liuerie or ouster le maine, and not vpon any that affirmes it, whereby I suppose that yelwertons opinion is lawe as is before declared. And it semes that by this statute the king must sue a scire facias although the recorde or title that is found for him bee founde within a yere after liuerí or ouster le maine sued. And lerne whether Assise lye against ỹ eschetour that seiseth without a scire facias in cases where a scire facias should be sued. For by ỹ sta. of W.1. ca.24. assise lieth against him in cases wher he seiseth anye landes by colour of his office wout speciall warrant or commaundement or certeine authoritie that belongeth to his office so to doe. And learne whether the king by that seisure hath any possession, for if the king seise without a scire facias where he ought to sue a scire facias, the partie hath no remedy but to sue vnto him by petition euen as he should do if his highnes had seised any other lands of his

Antea. 63.ab c. 65. BC.

Trauers, 31. p. 28.

H.5 H 5.

Antea. 74. (b)

without cause. Howbeit the king by such a reseiser vndoeth not the parties possession, so that he shalbee saide an entruder from the time of the liuerie or ouster le maine sued as it doth in case the reseiser had bene vpon a scire facias, wherfore in such case although the partie cannot be suffred to recouer his possession againe by entrie vppon the king, yet when the kinge graunts it ouer, he may now enter or haue assise, as appeareth. 24. E. 3 fo. 34. et. 43. li. All. Also note ỹ this statute that geeues the scire facias extendes but vntoo him or them haue liuerie or ouster le maine or anye other claiming by them. For if after liuerie ou ouster le maine sued a stranger by an eigne title in disaffirmyng the tenãts interest enter as heire vpon him, or recouer by assise of mor dauncestor or any other accion auncestrell against him & is entred into the land as heire, nowe because the landes are holden of the king in chiefe, his highnes may seise the saide land for primer seisine or title of Wardshippe as the case doth require without any scire facias, as appeareth. 21. E. 3. For it is not to be said now a reseiser, because against hym there was no seiser made of the saide landes before. And lerne & enquire if he that misshueth the liuerie be within age whether the king shal reseise in that case as he shall doe if it were misshued by one of ful age, as take ỹ case to bee, landes are holden of the kinge in Socage in Capite, now the liuerie is sued within age, that is to saye at the age of. 14. yeres whether in this case ỹ misshuing of ỹ same shall be a cause of reseiser or not, see the booke thereof 12. R. 2. The wordes of the statute be further, that if any record be found in the tresorie or elles where that vpon this record a scire facias shall be awarded. But that is to bee vnderstande in this maner, that first the transcript of the said record shalde by writ remoued into the Chauncerie and then out of the Chauncery shal there be a scire facias awarded, & not out of the tresory as it appeareth. 21. lib. All.

Trauers. 26.

21. E. 3. fo. 1.

Fitz.

T. 12. R. 2

21. li. ass.

Issue

Issues mesne

Ca. 11

NOte that if ỹ king haue a title, right or interest to any lands or tenements, his highnes whē he seiseth shal be answered of all the mesne issues and profites from the time of his sayd title, right, or interest growen, and whether it be a right of entre or title of entre it maketh no diuersitie in the kinges case, as for an example, the king entreth for a condition broken, his highnes shalbe answered of all the issues and profites sins the condition broken, and yet in that case a common person shal not haue the issues and profites but from the time of his entrie. Like law is it if the kinges tenaunt alien in mortmain, and the kinge entreth, but otherwise it is if he entre for mortmain in lands not holden of him vpon a title deuolued vntoo his highnes in defaut of other lords. And these cases appere ỹ. 19. et 41. E. 3. fo. 22. The same law is it where his highnes is entitled to seise for that the lands are of his foundacō, and alienated contrarie to the statut of west. 2. ca. 41. which geues the writ tof contra formā collationis, in this case his highnes shalbe answered of all the mesne issues growen from the time of the alienacō, as appereth ỹ. 46. E. 3. And note also that if the king make any graunt which is not sufficient in the law or is deceiued in the making of the same by reason it was made vpon a false suggestion, in his case if this highnes doth resigne this grāt & admull it iure regis as he may, he shalbe then be answered of all the mesne issues & profits which were loft by reason of the sayde insufficient graunt, as appereth. ỹ. 4. But if his highnes bee entitled to any lands nomine destriccionis, there his highnes shall not bee answered of the profites, but from the finding of that title, as in case where the kinges tenant in chief alieneth without

19. E. 3. Entre cōg. P. 39.

H. 46. E. 3. Fort. P. 18.

resmme

11. H. 4. f. 5. g.

out licence and an office is therof found, in this case his highnes shal not be answered of the profites from the time of that alienation, but onely from the tyme of the findinge of the office, or from the tyme of a Scire facias returned wher the alienatiō is of record, and herof see the booke
P.8.e.4.f.4 8.E.4. Like law is where his highnes is to seise the lands
40.li.Ass. of his widow that hath maried her self without his licence.
Gard P.36. And note that where the king is to be ānswered of the meane issues and profits perceiued and taken of any landes which haue come to sōdry hands sins the kings title first growen to the same, there euery one of them ẏ haue sondrely so perceiued and taken the profits shal answer for his owne time and not one for all, as it appereth in the boke of 46. before remembred. And note also that by the statut of w.2.ca.12. it is prouided that if any spiritual man bring any real action and recouer, that the land recouered shall remayne in the kinges hands vntill such time as it be sued out of his hands by him that recouered, or els by the chiefe lorde and in the meane time the shiriue shal aūswer the kinge in ẏ eschequer of the profites, by which statut whether the collusion bee found or not found, yet the king shal haue the meane issues
20.H.6.f.42 as it is thought 20.H.6. So it is in a writ iudicial of deceite
38.fg.1 brought against any the king shall haue the issues growen
42.23.2.a. from the time of the first iugement vntill iugement be geuē in the sayd writ of disceit.

¶ Some tymes the kynge recouereth of the issue in the allowance of an estraunge tytle, as ẏ the husband beynge the kynges tenant vpon a false suggestion purchaseth lycence for alīe & to take estate to him & to his wife, & so doth, & afterward dyeth, the wife holdeth her in by title of Suruiuor & occupieth, nowe vpō a Scire facias against the wife, his highnes shal bee answered of all the meane issues since her occupiynge of the ii. parts of the land, and the thyrd part he recouereth and alloweth for her dower. 40.li.Ass.P.36.

Note

¶ Note that in a writ of diſceit vpon a recouery in a Preeipe quod reddat of land where the proces was a grád Cape, if the pleintyfe recouer, he ſhall recouer the land and his damages, but not the iſſues of the land ſynce the fyrſt iudgement, becauſe the kinge ſhall haue them by the graunde Cape, and the ſhirife accomptable of thé. quod vide titulo diſceit in Fitz P. 33. 46. 7. 32. Contrarie lawe is it if there ſe no grand Cape in the action, as if the recoverie be in a Scire facias, as it appereth titulo Diſceit in Fitz P. 36. & 27. 40. Li. Aſſ. Gard. P. 1.

Finis

Diuers other prerogatiues therbe, which ẏ kig hath by the order of ẏ comõ lawe ẏ be not wĩ this ſtatute cõpriſed, a great part wherof vnder ẏ title of Prerogatiue maiſter Fitz herbart hath moſt diligẽtli noted in his great Abridgmẽt, & ſo well ordred & placed there, ẏ I doo of purpoſe omit to reherſe them here. The reſt woulde require ſo longe a ſerche that oneles I had gathered and noted them al redie (as I haue not dõe in dede) I ſhould be faine to peruſe the hole bodie of ẏ comõ Lawes for the knowleg therof whereuntoo time ſeruethe mee not, where fore at this time myne intent is not to medle with them.

Imprynted at Lon-
don in flete ſtrete within temple
Barre at the ſigne of the hand & ſtarre.
by Rychard Tottel, An.
1567.

Cum priuilegio.